

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,)
)
vs.) 2:19-CR-159
)
SAMANTHA ELHASSANI.)

TRANSCRIPT OF SENTENCING HEARING
November 9, 2020
BEFORE THE HONORABLE PHILIP P. SIMON
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

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Martin D'Amico - FBI

1 (The following proceedings were held in open court
2 beginning at 9:57 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

4 **THE COURT:** All right. You can be seated.

5 Good morning, everyone.

6 **MR. ZANZI:** Good morning.

7 **MS. CHANG:** Good morning.

8 **THE COURT:** We're on the record in Cause
9 No. 2:18-CR-33, United States versus Samantha Elhassani. We're
10 here this morning for the sentencing of Ms. Elhassani who is
11 here with her lawyers, Mr. Herman and Mr. Durkin. We have
12 Ms. Chang, Mr. Whalen, and Mr. Zanzi --

13 Who is this gentleman?

14 **MR. ZANZI:** This is the case agent, Special Agent
15 Martin D'Amico.

16 **THE COURT:** -- who is here on behalf of the
17 government.

18 So the defendant appeared before the Court back on
19 November 25 of last year and entered a plea of guilty to the
20 one-count Information that was filed against her, and she was
21 adjudged guilty on that plea at that time. And I ordered the
22 preparation of a presentence report, which we received back in
23 April of this year in Document Number 18.

24 I have studied the report and the addendum to the report.
25 I have also received, well, a number of other filings, sort of

1 a deluge here. So there was a very, very lengthy addendum to
2 the presentence report that I have reviewed.

3 And then there were initial filings that were made by each
4 party on August 17, comprehensive filings, and then there were
5 supplemental filings that were made simultaneously on
6 September 4 of this year, one from each party, Document 31 and
7 32. And then there's hundreds and hundreds of exhibits that
8 were filed in conjunction with those filings.

9 And then just recently, last Thursday or Friday, the
10 defense filed a supplemental sentencing submission dealing with
11 a case that was recently released or handed down by the Ninth
12 Circuit.

13 So that's all of the material that I have reviewed in
14 advance of the hearing today. Does that sound like the, sort
15 of, corpus of information I have in front of me for purposes of
16 sentencing?

17 Mr. Durkin?

18 **MR. DURKIN:** Yes, Judge.

19 **THE COURT:** Mr. Zanzi?

20 **MR. ZANZI:** Yes, Your Honor.

21 **THE COURT:** All right.

22 Mr. Durkin, did you have a chance to sit down with your
23 client and thoroughly go over the contents of the presentence
24 report sometime before the hearing today?

25 **MR. DURKIN:** Either I or Mr. Herman did, Judge.

1 **THE COURT:** Okay.

2 Ms. Elhassani, is that true, did you sit down with these
3 gentlemen, or one of them, and thoroughly go over this report
4 before the hearing?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Mr. Zanzi, I assume you did as well; is
7 that correct?

8 **MR. ZANZI:** That's correct, Your Honor.

9 **THE COURT:** All right. So the presentence report and
10 the addendum are placed in the record under seal. It's
11 directed if an appeal is taken counsel on appeal shall be
12 permitted access to the sealed report.

13 Did both of you also receive Mr. Bošnjak's sentencing
14 recommendation in this case?

15 Mr. Durkin?

16 **MR. DURKIN:** Yes, Judge.

17 **THE COURT:** Mr. Zanzi?

18 **MR. ZANZI:** Yes, Your Honor.

19 **THE COURT:** All right. So the addendum to the
20 presentence report sets forth the objections that I need to
21 resolve.

22 Does the addendum accurately identify what's in dispute?

23 Mr. Zanzi?

24 **MR. ZANZI:** Yes, Your Honor.

25 **THE COURT:** Mr. Durkin?

1 **MR. DURKIN:** Yes, Judge.

2 **THE COURT:** All right. So would both of you agree
3 that everything else in the presentence report, other than
4 what's identified in the addendum as being in dispute, is
5 everything else materially accurate?

6 Mr. Durkin?

7 **MR. DURKIN:** If I can have a second.

8 **MR. HERMAN:** Yes, Judge. To make sure we understand
9 the question, aside from what's set forth in the addendum, is
10 everything else in the presentence report correct?

11 **THE COURT:** Yeah, that's right.

12 **MR. HERMAN:** Yes, Your Honor.

13 **THE COURT:** Okay.

14 Mr. Zanzi?

15 **MR. ZANZI:** Correct.

16 **THE COURT:** All right. So I do adopt the factual
17 statements contained in the presentence report as my own
18 findings of fact unless otherwise objected to in the addendum,
19 and we have a couple of guideline issues that we need to argue
20 about before I hear your presentation of whatever evidence you
21 wish to present.

22 So let's deal with the two guideline issues first. The
23 first one relates to whether an enhancement should be -- a
24 two-level enhancement under 2M5.3.

25 This is an increase in the guidelines, so, obviously, the

1 burden is on the government because it's an increase in the
2 guidelines.

3 So, Mr. Zanzi, I'll hear whatever you want to present to
4 me by way of proffer or evidence on that first objection.

5 **MR. ZANZI:** Your Honor, we've laid out our position
6 on this enhancement, and it's in the addendum, Document 19,
7 page 43, that fully states our position why this enhancement
8 applies, and we rest on that argument.

9 **THE COURT:** Mr. Herman, do you want to be heard on
10 this?

11 **MR. HERMAN:** Yes, briefly, Judge.

12 And in making these objections to the two enhancements
13 found at paragraphs 58 and 60 of the final PSR, we recognize,
14 as we set forth in the pleading, that it ultimately would not
15 affect the final guideline conclusions, so with that in mind,
16 I'll make my comments brief.

17 But we do think, especially because this argument bleeds a
18 little into the 3553(a), that the -- this particular
19 enhancement for 2M5.3(b)(1) requires proof that Ms. Elhassani,
20 Samantha, had the intent, knowledge, or reason to believe that
21 the funds or resources were used to commit or assist in the
22 commission of a violent act.

23 The facts of this case are incredibly, incredibly unique
24 and very much unlike the typical case where you see this
25 enhancement applied where a defendant is providing funds

1 directly to a terrorist organization or, more specifically,
2 firearms or other resources that will, obviously, have only one
3 purpose.

4 This is a case where Ms. Elhassani has pled guilty to
5 concealing financial transactions for her husband and her
6 brother-in-law prior to them even being members of any type of
7 terrorist organization.

8 The government in the addendum cites a couple of cases
9 that really refer to a different guideline, firearm guideline,
10 2K -- I forget the subsection -- where somebody is providing
11 guns to a gang and it's knowledge that those firearms could be
12 used for another criminal offense. This is much more specific.

13 And our point is only because of the levels of
14 attenuation, the timeline, and the lack of proof of
15 Ms. Elhassani's mental state at the time, at the time regarding
16 the use specifically for violence, that this guideline should
17 not apply. And, again, we say this recognizing that the
18 ultimate calculus is probably not going to be affected, so with
19 that caveat.

20 **THE COURT:** Mr. Zanzi, you want to respond to that?

21 **MR. ZANZI:** I think this turns on what she knew at
22 the time, Your Honor, and it's clear to us, and clear in the
23 record, that she knew that her husband and brother-in-law
24 wanted to fight for ISIS, just join or become members. Whether
25 or not they actually were card-carrying members at the time,

1 the whole purpose for this was for them to fight for ISIS; and
2 at the time that she agreed to help them and at the time she --
3 you know, there is a --

4 The plea agreement states that she moved this money
5 knowing that they were going to be used to benefit ISIS. So
6 when she did this, she knew that they wanted to fight for ISIS
7 and she knew what ISIS was. She knew she had seen the videos
8 of Jihadi John that were all over the Internet where they were
9 beheading individuals. She knew this was a violent
10 organization and they were going over there to commit violence.
11 They weren't just going over there as a place to move. They
12 were going over there to commit violence and to fight for ISIS.
13 So it does require Your Honor to find that, and we believe the
14 record reflects that.

15 **THE COURT:** All right. I'm going to overrule the
16 objection. I do believe that the government has shown by a
17 preponderance of the evidence that 2M5.3(b)(1) has been met.

18 What that provision says is that if the offense involved a
19 provision of dangerous weapons, firearms, explosives, funds,
20 with the intent or knowledge or reason to believe that the
21 funds would be used as material support in the commission of
22 violent acts, then you get a two-level enhancement under this
23 provision.

24 And I do think, based on the preponderance of the evidence
25 here and, frankly, on what the defendant admitted to at her

1 plea hearing, that she engaged in a series of financial
2 transactions in advance of their ultimate move to Turkey and
3 then into Syria, that she engaged in a number of financial
4 transactions in an effort to assist her husband and
5 brother-in-law in joining ISIS.

6 And the natural and probable consequence of that and the
7 clear foreseeable consequence of that is that they were joining
8 ISIS not just in, sort of, spirit alone but with intent to join
9 the Caliphate and to engage in violent acts on behalf of ISIS.

10 And I do think the cases cited by the government in the
11 firearms portions of the guidelines are, you know, by analogy
12 apt here. *United States v. Jemison*, for example, 237 F.3d 911
13 at 918, it is a Seventh Circuit case from 2001, stands for the
14 proposition that somebody who provides guns to a gang, like the
15 Gangster Disciples, has good reason to believe that those guns
16 are going to be used for violent purposes.

17 And at least, by analogy, I think the same can be said
18 here. That Ms. Elhassani's actions in moving thousands and
19 thousands of dollars overseas into Hong Kong and then into
20 Turkey, all the while knowing she's doing that because her
21 husband and brother-in-law have the intention of joining ISIS,
22 for the purpose of being ISIS fighters, she surely knew that
23 those funds were going to be used to help commit violent acts.

24 So on the preponderance of the evidence, I believe the
25 government has demonstrated the applicability of this guideline

1 provision, and so the objection to that is overruled.

2 All right. The next objection deals with 3B1.4 of the
3 guidelines, and that's if the defendant used or attempted to
4 use a person less than 18 years of age to commit the offense,
5 either in assisting in the offense or avoiding detection of the
6 offense, then you increase by two levels.

7 Again, this is an increase in the guideline range, so the
8 burden is on the government to prove it.

9 So, Mr. Zanzi, I'll hear from you on this.

10 **MR. ZANZI:** Yeah. In addition to what we've filed
11 and what's available in the presentence report addendum,
12 Your Honor, this is a crime of concealment, of concealment of
13 funds. The whole government theory of the case is that
14 defendant was -- brought this money over to Hong Kong because
15 it wouldn't draw attention. She was chosen because she
16 wouldn't draw attention. She was a U.S. citizen traveling with
17 a minor son; additionally, wouldn't draw attention. There's no
18 reason to bring a minor on these trips.

19 **THE COURT:** How do we know that?

20 **MR. ZANZI:** Is that --

21 **THE COURT:** How do we know there was no reason to
22 bring him on the trip?

23 **MR. ZANZI:** Well, Your Honor, just from the fact. To
24 bring him twice on -- especially, one of those trips was less
25 than 24 hours. Was there -- this is an inference based on the

1 facts drawn. I know that defendant has argued in their
2 response that because she was afraid to leave him alone, but we
3 responded with that as well, Your Honor.

4 That's not what is reflected in defendant's own words.
5 That's not the relationship that existed in February of 2015
6 between Moussa and the son, that they had a close relationship.
7 There's no indication that she was afraid to leave the son with
8 him.

9 **THE COURT:** I thought she left the other child with
10 somebody else, not Moussa.

11 **MR. ZANZI:** No.

12 **THE COURT:** Is that wrong?

13 **MR. ZANZI:** No, the other child was home with Moussa
14 while they were in -- there's nothing in the record that
15 reflects otherwise.

16 **THE COURT:** Okay.

17 **MR. ZANZI:** So two white people going to Hong Kong is
18 less likely to draw attention, frankly, Your Honor, and --

19 **THE COURT:** I don't see why. Why is a woman --
20 30-year-old woman traveling to Hong Kong alone more likely to
21 draw suspicion than a 30-year-old woman with an eight-year-old
22 child to draw suspicion? I mean, I don't understand that.

23 **MR. ZANZI:** Well --

24 **THE COURT:** Other than you're just sort of telling me
25 that it's so.

1 **MR. ZANZI:** Yeah. Well, I think it's also evidence
2 by the communications with other people. Look, she's
3 communicated with her friend, look, we're going to Disney
4 World. We're going here on a vacation. It provides a cover
5 story of why they are going. We are going to travel. We're
6 going to have fun.

7 If it wasn't such a big deal, then why not tell the father
8 of the son they were going to Hong Kong? She took him there
9 and didn't tell the father, and the father is about to testify,
10 Your Honor. He's going to say that he wouldn't have had any
11 issue with his son going to Hong Kong for vacation. He wanted
12 his son to see the world. That's why he approved it. But she
13 didn't tell him that. This is all part of the subterfuge,
14 Your Honor.

15 Whether or not it's great effective subterfuge, I don't
16 know; but it certainly is -- the conclusion -- we think the
17 evidence supports that conclusion, that mother traveling with a
18 child and using it allows further opportunity to create a story
19 and an explanation for why they are going to Hong Kong.

20 **THE COURT:** Okay. I understand your argument.

21 Mr. Herman.

22 **MR. HERMAN:** Yes, Your Honor.

23 **THE COURT:** I mean, this is a close call.

24 **MR. HERMAN:** Yeah. I think you put your finger on
25 some of our concerns. One is that there's an argument -- and

1 this is one that's equally balanced, and, therefore, you can't
2 make the preponderance that traveling with a child during the
3 school year, especially for a one-day turnaround trip, is apt
4 to raise greater concerns, especially to Hong Kong, than it
5 would be to act as some type of subterfuge.

6 The government mentioned a couple of times that you look
7 at the communications, but in the addendum, there are two
8 communications that are identified. One is an email with
9 Cassie Daniels, and in that email from February 21, 2015,
10 Cassie says something like, "I wish I was with you guys" --
11 mentioning Sam and M [REDACTED] -- and Sam responds, "Sorry I didn't
12 tell you I was leaving. It was very last minute. We were
13 trying to make a business deal that kept going south."

14 There's no reference to M [REDACTED] here. There's no
15 reference to going on a vacation. It's the opposite of using
16 M [REDACTED] as a subterfuge when Cassie is saying, "I wish I was
17 with you guys," and Sam says, "I'm on a business deal. I had
18 to leave last moment."

19 The government has also mentioned Disney World, and
20 there's a citation. And the citation is to a recorded call
21 with a reporter, so I hope I'm not missing another document,
22 and if I am, I'll address it. But that conversation with the
23 reporter is, obviously, years afterwards; and on that call at
24 about the 10-minute mark -- apparently, you've listened to it
25 already -- she tells the reporter: "I didn't tell Moussa we

1 were going to Disney World. I treated this. I did this as --
2 if he wanted me to go over there, I took it upon myself to take
3 some time on my own without telling Moussa," because -- we'll
4 get into this -- because Moussa might have disapproved of her
5 going on a vacation and showing M [REDACTED] a good time.

6 And the other point about the child's father. The
7 government just acknowledged that she didn't tell the child's
8 father where they were going. How is the child acting as a
9 decoy if, again, she doesn't tell the child's father where
10 they're going? This is a mere presence case, and the presence
11 is because she didn't want to leave M [REDACTED] with Moussa.

12 One second.

13 And when Sam left, the daughter, the minor daughter, which
14 was the only other one alive at the time, stayed with a friend
15 named Cassie Daniels.

16 **THE COURT:** Mr. Zanzi, I'll give you the last word on
17 this.

18 **MR. ZANZI:** I have nothing further, Your Honor.

19 One thing I would just ask though. I know we're -- just
20 in mentioning names, the father has asked that we refer to the
21 child by initials M.S. going forward, if we could.

22 **THE COURT:** I've just been referring to him by his --
23 I haven't yet on the record, but sort of in my mind and
24 internally as I prepared my notes, just by his first name. But
25 what is his initials?

1 **MR. ZANZI:** M.S. And the father's initials are J.S.
2 There's just a concern about --

3 **THE COURT:** I understand.

4 **MR. HERMAN:** You can tell from our pleadings that we
5 were very conscious of that.

6 **MR. ZANZI:** They were.

7 **MR. HERMAN:** If I said something like that, it just
8 wasn't --

9 **THE COURT:** Okay. So let's just call the son by M.S.
10 and the father by J.S. just to protect their anonymity.

11 I think this is a close call, but I do think this is a
12 weak application of 3B1.4 of using a minor to commit a crime.

13 What that provision says is that if the defendant used or
14 attempted to use a person less than 18 years of age to commit
15 the offense or assist in avoiding detection of or apprehension
16 for the offense, you increase by two levels.

17 There's no question that the defendant brought her son on
18 these two trips to Hong Kong, and I think we can all agree that
19 it wasn't a good idea by any stretch of the imagination. We'll
20 talk about that later. But whether that was done specifically
21 for the purpose of avoiding detection, which is what the
22 government's argument is, I think is just supposition at this
23 point. I don't have any real evidence that that was what she
24 was intending to do.

25 It may have been that her husband couldn't handle both

1 kids. It may have been that there -- you know, she really did
2 want to take him to see Hong Kong. I have no idea. It also
3 could have been that she did want to use him as a subterfuge,
4 but I'm not going to decide the issue based on just conjecture.
5 I just don't think I have enough evidence in front of me to
6 demonstrate that her intended purpose in bringing her son was
7 to avoid detection.

8 Intuitively, it doesn't make a lot of sense to me, whether
9 she was traveling alone or traveling with her son, one would
10 have drawn more suspicion over the other. I just don't see how
11 that's necessarily the case. I think it's a close call, but I
12 on balance think the defense has the better of the argument.
13 So I'm going to sustain their objection to the 3B1.4
14 enhancement for using a minor to commit a crime.

15 The last thing I want to talk about -- and we had a
16 discussion off the record prior to coming out here. I do want
17 to discuss on the record this supplemental filing that was made
18 by the defense in this case back on November 5.

19 In the plea agreement in this case, the parties agreed
20 that the defendant would be held accountable for the terrorism
21 enhancement under the guidelines; that's 3A1.4. Of course,
22 that enhancement has a massive effect on the application of the
23 guidelines.

24 If the terrorism enhancement applies, then there's a
25 12-level increase in the offense level and the defendant is

1 launched into criminal history category VI. So it has a
2 substantial effect on the application of the guidelines.

3 I have an independent obligation to determine whether or
4 not that guideline enhancement applies, and the agreement in
5 this case is an 11(e)(1)(B) agreement that these are merely
6 recommendations to the Court. They're not binding the Court on
7 the application of this enhancement. I have some misgivings
8 about the applicability of this enhancement, candidly.

9 And I want to ask the defense, first, what is your
10 intended purpose for filing Document Number 37 and bringing
11 this Ninth Circuit case that held that the enhancement does not
12 apply, you know, in bringing it to the Court's attention? I
13 want you to make a record, if you could, on the reason for this
14 filing.

15 **MR. DURKIN:** Judge, as we told you in chambers, we
16 filed this knowing that we had committed to a plea agreement in
17 which we agreed to the applicability of the enhancement.

18 At the time we made that agreement, it was our general
19 understanding that in virtually any case charging terrorism
20 that enhancement applied. In fact, I think we had cited -- we
21 have cited in our pleadings the opinion of a judge in the
22 Eastern District of New York who was very critical of what he
23 called and what we've been calling the "one size fits all
24 enhancement." That was our understanding of the law at the
25 time.

1 Now, whether there were some exceptions to that, I don't
2 specifically know; but this was presented to us as a
3 non-negotiable issue. And for the reasons that we, I think,
4 have made clear in our pleadings, the defendant wanted to plead
5 guilty. She did not want to have to go through the ordeal of a
6 trial, and we believe that there was sufficient evidence for
7 the government to present that is consistent with guilt under
8 this particular statute.

9 We would not have agreed -- as you know, we wanted -- the
10 lawyers wanted to try this case. We would not have permitted a
11 plea under 2339A or B. We thought that was not consistent with
12 the facts; and when C was presented, we thought that was, at
13 least, more consistent with the facts as we understood them.
14 Whether our contesting them or not, it was a different issue,
15 at least -- from a professional, ethical standpoint, we thought
16 there were sufficient facts to permit a plea under 2339C.

17 We did not provide that case to the Court to advocate
18 something that we cannot advocate. That's simply how we viewed
19 it. We presented it to you under 3553(a) in the same sense
20 that we have argued no matter what guidelines you find the one
21 size fits all terrorism enhancement, whether that's the current
22 law in the country or not -- I still think the general law in
23 the country is it applies, except maybe in some rare
24 instances -- this being one of them -- the Ninth Circuit case.

25 But if there was ever a case to suggest or state, as we

1 have, that the criminal history category VI and the draconian
2 consequences of the terrorism enhancement simply overstate this
3 conduct, so that's why we submitted it. If Your Honor, as I
4 said earlier, thinks we made a mistake and should not have done
5 that, I'll have to live with it.

6 I think -- I don't want to start advocating.

7 **THE COURT:** I understand.

8 **MR. DURKIN:** If you want my opinion -- if you want my
9 opinion.

10 **THE COURT:** No, I don't.

11 **MR. DURKIN:** Okay.

12 **THE COURT:** I want to know why you made this filing,
13 and you told me why you have done that, that you really are
14 telling me that it's a filing to show that, the harshness of
15 the applicability of this enhancement, under these facts, and
16 it's a 3553(a) argument; it is not an argument that the
17 terrorism enhancement doesn't apply. That's what I'm taking
18 from you.

19 Is that fair?

20 **MR. DURKIN:** Right.

21 In simple terms, it seems to me, logical, that if there
22 would be an argument that would cause anyone, you, the
23 government, me, Joe man on the street to think that maybe it
24 doesn't apply, that's a good 3553(a) argument.

25 **THE COURT:** All right.

1 Mr. Zanzi, what I would like to hear from you, because,
2 again, I have an obligation to properly arrive at the proper
3 application of the sentencing guidelines, and given the drastic
4 nature of the 3A1.4 terrorism enhancement, you know, I would
5 like to hear from you why you think it applies.

6 And, in particular, comment on -- as I understand it, this
7 is a two-prong standard. The government has to show, first,
8 that the defendant committed an underlying offense that's
9 specifically delineated in the statute, and, of course, she
10 did. It's listed in 2332b. One of the underlying predicates
11 is financing of terrorism under 2339C, such that that part of
12 the definition of federal crime of terrorism is readily met.

13 The part I want you to comment on is what evidence do you
14 have that the defendant had the specific intent when she
15 engaged in the conduct that she engaged in, specific intent, to
16 influence or affect the conduct of government by intimidation
17 or coercion or to retaliate against government conduct? That's
18 the second prong that the government would have to prove to
19 show the applicability of the terrorism enhancement.

20 Do you agree with how I have just laid that out,
21 Mr. Zanzi?

22 **MR. ZANZI:** Yes, Your Honor. We agree that those are
23 the two prongs, except that -- I guess the second prong is that
24 her conviction is designed for the crime of conviction, that
25 the facts support that she intended to affect government

1 change -- or that the purpose of her actions was to affect
2 government change, Your Honor.

3 First of all, I want to start by saying that I do -- for
4 the record, the government finds that the supplemental filing
5 is an advocacy for the non-application of the enhancement and
6 that appears to be the desired effect, to question Your Honor
7 about whether or not this enhancement applies. We're not
8 seeking to withdraw from the plea agreement or --

9 **THE COURT:** I mean, that's your right if you think
10 that that's what they're doing.

11 **MR. ZANZI:** We understand that. And we're not going
12 to do that.

13 But that being said, Your Honor, we do believe that this
14 case is very distinguishable from the *Alhaggagi* case that was
15 provided by the defense. That was a case where -- and I'll
16 start by reading a quote from that case, and then I'll explain
17 why the evidence is different in this case.

18 On page 22 of that opinion, the district court says,
19 "Opening a social media account" -- which is what the defendant
20 in that case did -- "does not inherently or unequivocally
21 constitute conduct motivated to 'affect or influence' a
22 government by intimidation or coercion. In other words, one
23 can open a social media account for a terrorist organization
24 without knowing how that account will be used; whereas, it is
25 difficult to imagine someone bombing a government building

1 without knowing that bombing would influence or affect
2 government conduct."

3 Your Honor, this is -- it is not the government's position
4 that the terrorism enhancement applies in every single
5 financing case. It wouldn't, for example, apply in a case
6 where someone provided funds for -- ISIS was designed to
7 establish a Caliphate. There were people there who were going
8 to just become doctors, to live in the Caliphate and provide
9 civilian work. Investing in that or providing financing for
10 that might not apply, but that is not this case, Your Honor.

11 We provided defendant's diary, "The Truth," as she called
12 it. Whether it is a diary, a memoir, it is what she has spoken
13 to the world of how she wants to sell this story. And early on
14 in this, it's page 8 of that diary, she says, "He never tried
15 to teach me anything about Islam. In fact, I didn't know about
16 the prayers, about the prophet. I didn't know anything. Now
17 he is telling me he wants to fight in the cause of Islam."

18 Defendant -- it's important to remember what defendant
19 knew at the time that she provided this assistance, that she
20 was moving money. When defendant learned that her husband
21 wanted to join ISIS, she was aware. She had seen the videos of
22 beheading. She expressed, in this diary, she was shocked that
23 he wanted to be a part of this. She knew that ISIS was a
24 violent organization, and anybody -- you would have to be
25 living under a rock to not know -- to have seen those videos.

1 Those videos were beheading of American journalists, and they
2 were designed to influence government -- to influence western
3 governments.

4 But separate and apart from that, what was ISIS doing?
5 What were fighters in ISIS doing at that time? Fighting in the
6 cause of Islam. ISIS believed in creating a new government, in
7 destabilized areas in the Middle East fighting against
8 governments. The enhancement does not refer to just the
9 American government. It is to affect government change.

10 Now, that's designed to -- because this affected American
11 national interest. Whether or not they were directly fighting
12 Americans there or -- this was -- America has strong national
13 security interests. That's why they were designated a foreign
14 terrorist organization.

15 And that was the goal. That was the goal. That was very
16 clear from all of the emails that the brothers in the family
17 were sending. They wanted to go there to fight, to fight and
18 to impact change, to create a new state. There couldn't be
19 anything that is more directed at impacting government change.
20 She knew that this was what they wanted to do. When she helped
21 them procure tactical gear, she knew that.

22 This is relevant conduct to her charge. She knew -- she
23 stated that she thought, oh, they were going to sell some
24 binoculars for hunting in Morocco. We don't believe the facts
25 support that at all, Your Honor. She knew they were going to

1 ISIS. What was this for? It was to be used for their cause of
2 becoming snipers and fighters for ISIS, Your Honor.

3 So unlike a case where a social media account is being
4 created or funds might be used to support the noncombative
5 aspects of ISIS, she knew that her husband wanted to become a
6 fighter for ISIS, and that was the purpose of this. And that's
7 what they were doing at this time, was affecting government
8 change. So we believe this is a very clear case based on the
9 purpose and intent of the financing and the concealment of
10 funds and why they were moving money there and why they were
11 going to Syria, that this enhancement applies, Your Honor.

12 **THE COURT:** Okay.

13 **MR. DURKIN:** Judge, could I just respond?

14 **THE COURT:** Sure. But you better not argue that it
15 doesn't apply.

16 **MR. DURKIN:** I'm not.

17 **THE COURT:** Go ahead. Whatever you want to say.

18 **MR. DURKIN:** I am not going to advocate against the
19 applicability of the guideline because I'm bound by the plea
20 agreement.

21 But I want to respond to what I think is an improper
22 selection of this diary, and I want to put it in context for
23 you so you understand it because it affects everything, not
24 just whatever you're trying to resolve on the guideline, which
25 I leave to you.

1 Can I simply put something into context for you --

2 **THE COURT:** Sure. Go ahead.

3 **MR. DURKIN:** -- and not be accused of advocating?

4 **THE COURT:** Proceed, Mr. Durkin.

5 **MR. DURKIN:** All right. The same diary, which, as a
6 general matter, we have commented on -- it's kind of like, as
7 Mr. Herman says, the government's wanting to play both red and
8 black. When they don't believe the information she provides to
9 somebody, she's a liar; but when she writes in her journal,
10 she's telling the truth and, therefore, this is proof positive
11 for them.

12 But in the same thing, let's assume this is all true in
13 this journal. Right after what he just read, it says, "I told
14 him I couldn't believe what I was hearing and I needed some
15 time to think." This is after he tells her he wants to go to
16 Syria. "I stayed away for a few days. I just worked and tried
17 to think of a solution. After a few days" -- and this is why I
18 felt obligated to comment. "After a few days, he actually came
19 to me apologizing. He told me he had spoken to another of his
20 brothers and they came up with a good plan. Me and my husband
21 were planning to buy a house so he made the suggestion we buy a
22 house in Morocco. It could be a vacation home and my cousin
23 could renew his visa from Morocco."

24 And then further down she says -- and just before where he
25 started, where he read -- and I think this is important --

1 she's talking about it sometime when some people were over:
2 "After our guests left, my husband said he wanted to talk about
3 Syria. I had been following the news, but I didn't know he was
4 talking about the Islamic state. Once he explained to me, I
5 was in shock, complete shock. Yes, my husband was a Muslim,
6 but he didn't even pray regularly. He never tried to teach me
7 anything about Islam. In fact, I didn't know about the prayers
8 about his prophet. I didn't know anything. And now he's
9 telling me he wants to fight in the cause of Islam," which is
10 what they read.

11 So, I mean --

12 **THE COURT:** Anything else you want to say, Mr. Zanzi,
13 in response to that?

14 **MR. ZANZI:** You know, I'm going to address this,
15 Your Honor, later, but this is what troubles us about this case
16 and this plea agreement, is that, you know, the plea agreement,
17 the factual basis of the plea agreement -- the only way she can
18 even plead guilty to this case -- otherwise there is no guilty
19 plea, there is no crime here -- is that when she did this she
20 knew at the time that it was going to be used to support ISIS
21 and she knew at the time that they wanted to fight for ISIS.

22 If she still thought that they were going to Morocco, she
23 thought that they were buying thousands of dollars of tickets
24 and going to Hong Kong because they were really going to buy a
25 vacation home -- cheap vacation property in Morocco or to get

1 knee surgery in Morocco, then how is she guilty of this crime?
2 How is she guilty of this crime? Defense says over and over
3 that they want to try this case. Well, you know, they are sort
4 of advocating for it.

5 She is guilty of this crime because she knew at the time
6 that she was moving the money that the purpose was for them to
7 join ISIS. You can't have it both ways, Your Honor. You can't
8 have it both ways. You can't say that she moved money to Hong
9 Kong because she thought she was going to Morocco, because then
10 she's not guilty. And I have no problem -- I don't want her to
11 plead guilty to something that she's not guilty of. I have no
12 problem trying this case, but this is the problem that I have
13 with this argument that's been made repeatedly.

14 **THE COURT:** Okay. We'll get into that when we -- I
15 hear 3553. Right now I'm focusing on the terrorism
16 enhancement.

17 **MR. ZANZI:** I understand, Your Honor.

18 **THE COURT:** And under 3A1.4, as I sort of alluded to
19 earlier, if the offense is a felony that involved or intended
20 to promote a federal crime of terrorism, increase the offense
21 level by 12. And in such case, the defendant's criminal
22 history category is automatically a category VI, sort of the
23 worst -- it is the worst out of the six categories of criminal
24 history.

25 So the question becomes: Was this intended to promote a

1 federal crime of terrorism? Now, on the face of it, just
2 reading that section, the answer is, well, of course, it is a
3 federal crime of terrorism. That's what she's pled guilty to.
4 She's financing -- assisting her husband and brother-in-law to
5 join ISIS and become fighters on ISIS's behalf.

6 But it's really not that simple because in the application
7 notes there's a very specific definition of, quote/unquote,
8 "federal crime of terrorism," and it sends you to Title 18,
9 United States Code, Section 2332b(g)(5).

10 And that position says that a "federal crime of terrorism"
11 means an offense that is a violation of 2339C -- that's, of
12 course, met here by virtue of her plea -- and that the conduct
13 or the offense is calculated to influence or affect the conduct
14 of government by intimidation or coercion or to retaliate
15 against government conduct.

16 So in order to get this gigantic terrorism enhancement,
17 that's what the government has to prove. I have substantial --
18 candidly, substantial misgivings about the application of the
19 federal terrorism enhancement under 3A1.4.

20 I have found a number of cases that have given me pause.
21 They all say that it's incumbent on the government to show that
22 the defendant acted with the specific intent to disrupt or
23 intimidate the operations of government, essentially.

24 And so, for example, *United States v. Chandia*,
25 C-H-A-N-D-I-A, 514 F.3d 365 at 376. It is a Fourth Circuit

1 case from 2008. What that says is, "To get the 3A1.4
2 enhancement, the government must show that the defendant had
3 the specific intent to affect the conduct of government by
4 intimidation or coercion."

5 A number of other cases that stand for that proposition,
6 *United States v. Hassan*, 742 F.3d 104 at 148, Fourth Circuit
7 case from 2014; *United States v. Wright*, 747 F.3d 399 at 408,
8 Sixth Circuit case from 2014; *United States v. Mohammed*,
9 757 F.3d 757 at 760. It is an Eighth Circuit case from 2014.
10 *United States v. Stewart*, 590 F.3d 93 at 138. It's a Second
11 Circuit case from 2009. *United States v. Awan*, A-W-A-N,
12 607 F.3d 306 at 317. It's a Second Circuit case from 2010.

13 What they said in that case was that 2332b(g)(5), the
14 section I'm just referring to, "is better understood as
15 imposing a requirement that the underlying felony be calculated
16 to influence or affect the conduct of government by
17 intimidation or coercion." It is not just enough that you be
18 convicted of 2339C. Again, you have to have the specific
19 intent to influence or affect the conduct of government.

20 There are cases that go both ways that are all over the
21 board, frankly, based on my research. And so I do have some
22 misgivings about the application of this enhancement, but given
23 the agreement of the parties that -- and the stipulation that
24 the application -- that this enhancement applies, and based on
25 the proffer and argument of Mr. Zanzi, I do find that the

1 terrorism enhancement does apply.

2 But it is worth noting, I think, that it's a very, very
3 close call, contrary to what the parties think. I think it's
4 actually really a very close call. And it is really important.
5 The ultimate disposition of this guideline enhancement makes
6 all the difference in the world.

7 By finding that the defendant should be tagged with this
8 terrorism enhancement, her guideline range, as I've now
9 computed it, she's a level 31 and a criminal history VI. That
10 leads to a range of suggested incarceration under the
11 guidelines of 188 to 235 months, essentially 15 to 20 years.
12 Of course, that is capped by virtue of the fact that she's pled
13 guilty to an offense that has a statutory maximum of 120
14 months.

15 Had I not found that the terrorism enhancement applied,
16 the defendant would have been a level 22 and a criminal
17 history category I and her guideline range would have been 41
18 to 51 months. So this decision has a two-and-a-half times
19 difference in the exposure, at least under the guidelines, so
20 it's a very consequential decision.

21 But, as I said, on balance, based on the government's
22 proffer and, frankly, the agreement of the parties that the
23 terrorism enhancement does apply, I'm going to go along with
24 that agreement.

25 **MR. DURKIN:** Judge, if we could, could we just have a

1 minute to explain this to Ms. Elhassani?

2 **THE COURT:** Let me finish and then we'll take a break
3 here.

4 **MR. DURKIN:** All right.

5 **THE COURT:** So the guidelines in this case are as
6 follows: As I just said, based on the rulings that I have just
7 made, there's a total offense level in this case of 31. The
8 criminal history category is VI. And by virtue of the
9 operation or the statutory cap, that means the guidelines are,
10 again, the statutory maximum here of 120 months. The
11 supervised release range is one to three years. The fine range
12 is 17,500 to 175,000. There's no restitution applicable, and
13 there's a \$100 special assessment.

14 Based on all the rulings that I have just made, is that
15 accurate?

16 Mr. Durkin?

17 **MR. DURKIN:** Yes, sir.

18 **MR. ZANZI:** Your Honor, supervised release, the
19 maximum is life under -- if the terrorism enhancement applies,
20 Your Honor.

21 **THE COURT:** Okay.

22 Troy; is that right?

23 **THE PROBATION OFFICER:** Yes.

24 **THE COURT:** In my sentencing --

25 **THE PROBATION OFFICER:** On the statutory column, it

1 shows zero to life.

2 **THE COURT:** Okay. So it's zero to life, but I was
3 speaking as to the guideline. The guidelines are one to three
4 years; is that right?

5 **THE PROBATION OFFICER:** Correct.

6 **MR. ZANZI:** Yes, Your Honor.

7 **THE COURT:** Of course she can go all the way up to
8 life, but the guidelines recommend one to three years.

9 **MR. ZANZI:** I misunderstood you then, Your Honor.
10 Yeah.

11 **THE COURT:** Okay.

12 All right. I do now accept the plea agreement entered
13 into between the United States and the defendant filed with
14 this Court back in November of last year. The judgment and
15 sentence will be consistent with it because I'm satisfied that
16 the agreement adequately reflects the seriousness of the actual
17 offense behavior and that accepting the plea agreement will not
18 undermine the statutory purposes of sentencing.

19 So do you want --

20 Noel, do you want to turn on the overhead noise there so
21 Mr. Durkin and Ms. Elhassani can talk with one another.

22 (Defendant and her counsel confer.)

23 **THE COURT:** Okay. You all set, Mr. Durkin?

24 **MR. DURKIN:** Yes, sir.

25 **THE COURT:** Okay. So we will kind of transition now

1 to -- I understand that the government has one witness and
2 maybe wants to make some proffers as well, and I understand the
3 defense also has some proffers that it intends to make. And
4 then I'll give both sides a full opportunity for allocution,
5 along with the defendant as well.

6 So let's do, sort of, the evidentiary part of it first and
7 then we'll hear from you by way of allocution.

8 I'll ask the government to proceed first. Tell me what
9 you intend to do here, Mr. Zanzi, in that regard.

10 **MR. ZANZI:** Yes, Your Honor. We are going to present
11 one witness, J.S., the father of M.S. And we also will be
12 playing a short video clip by way of proffer as well. It is
13 about a minute and 15 seconds. It doesn't relate to the
14 witness, but other than that -- so it should be a pretty short
15 presentation.

16 **THE COURT:** Okay. Why don't we get J.S. in here and
17 we'll take his testimony first.

18 **MR. ZANZI:** I should remain seated here, right?

19 **THE COURT:** Yes. We are going to put the witness up
20 in the corner there.

21 **MR. ZANZI:** Okay. Thanks.

22 Does he have a screen in front of him, Your Honor?

23 **THE COURT:** We can use this one if you're okay with
24 that. I also think he has a screen in front of him as well,
25 just as the juror would.

1 Sir, would you raise your right hand to be sworn in.

2 (The oath was administered.)

3 **THE WITNESS:** I do.

4 **THE COURT:** Okay. Sir, you may be seated.

5 Sir, during your examination, if you would, remove your
6 mask just so I can sort of see you talking and have a human
7 exchange here. Then, when you are done, I will have you put
8 your mask back on, okay.

9 **THE WITNESS:** Yes, sir.

10 **THE COURT:** All right. Mr. Zanzi, you may proceed.

11 **MR. ZANZI:** Thank you, Your Honor.

12 J.S., GOVERNMENT'S WITNESS, SWORN

13 **DIRECT EXAMINATION**

14 **BY MR. ZANZI:**

15 **Q.** Sir, I'm going to refer to you, as we have discussed
16 previously, as J.S., okay.

17 **A.** Okay.

18 **Q.** I'm going to refer to your son as M.S., okay.

19 **A.** Okay.

20 **Q.** I know people make mistakes, but we'll just try our best
21 to follow that, okay.

22 **A.** All right.

23 **Q.** Do you know the defendant, Samantha Elhassani?

24 **A.** Yes.

25 **Q.** And I'm asking you just to speak into the microphone so we

1 can all hear you, okay.

2 A. All right.

3 Q. So you know the defendant, Samantha Elhassani?

4 A. Yes.

5 Q. How do you know her?

6 A. We were in a relationship together, and we have a child
7 together.

8 Q. How long have you known her?

9 A. Since around 2003 -- or '4 or '5, 2004 or '5.

10 Q. And how old was -- when did you separate?

11 A. We separated when M.S. -- or my son was around three years
12 old.

13 Q. Okay. And how old is M.S. now?

14 A. Thirteen.

15 Q. Initially, when you separated with defendant, who did your
16 son stay with?

17 A. He stayed with me.

18 Q. For how long?

19 A. For about a year.

20 Q. Briefly -- I don't need all the details -- but why did the
21 relationship end?

22 A. Mostly because of deception. Sam was staying after work
23 and partying with her friends and not coming home.

24 Q. And after the year that your son stayed with you, what
25 happened regarding custody?

1 A. Well, there never was a custody agreement, but my son
2 ended up living with Samantha due to the fact my babysitter got
3 pregnant, and she was stable enough that he was safe to live
4 there.

5 Q. And after your son started living with defendant, did you
6 try to maintain a relationship with your son?

7 A. Yes, I did maintain a relationship.

8 Q. Were you successful in doing so?

9 A. Yes.

10 Q. Do you maintain a relationship with defendant's parents?

11 A. Yes.

12 Q. How would you describe that relationship?

13 A. Very good.

14 Q. You get along with them?

15 A. Yes.

16 Q. And how did you become aware of defendant's relationship
17 to Moussa Elhassani?

18 A. After -- Sam told me, eventually.

19 Q. Do you remember, approximately, when that was?

20 A. After she moved to Indiana, but I don't have a time frame.

21 Q. Okay. And did your relationship with your son change
22 after defendant became involved with Moussa?

23 A. Yes.

24 Q. How so?

25 A. The visits became less frequent and the phone calls became

1 less frequent.

2 Q. Why is that?

3 A. I'm not sure. I wasn't there on her side.

4 Q. Did you try to maintain your relationship with your son?

5 A. Yes.

6 Q. But you weren't successful?

7 A. Correct.

8 Q. Based on what you knew and what you were able to observe,
9 did you have any concerns about your son living with Moussa and
10 defendant?

11 A. No.

12 Q. Did you become aware of an effort by Moussa to adopt your
13 son?

14 A. Yes.

15 Q. How did you become aware?

16 A. Samantha's sister called me and notified me.

17 Q. And were you -- did anyone inform you about that ahead of
18 time?

19 A. No.

20 Q. Or request your permission?

21 A. No.

22 Q. Do you know the details of anything that was relayed to
23 the Court regarding that?

24 A. The only details I know is that Samantha was attempting to
25 file for the adoption under the premise that I was not in

1 communication with her, that I had abandoned my son.

2 Q. And was that true?

3 A. No.

4 Q. How was that issue resolved?

5 A. I showed up for the Court hearing, and then it -- Samantha
6 and Moussa no longer pursued it.

7 Q. During the -- in the last year, before your son left for
8 abroad, did it become harder for you to maintain contact with
9 your son?

10 A. Yes, it became less and less communication.

11 Q. Did you notice -- in the times that you were able to spend
12 with your son, did you notice any changes in him?

13 A. Yes. Once when he came to visit, he started practicing
14 Islam. I walked into a bathroom and found him praying on the
15 floor.

16 Q. Anything else that led you to believe he was practicing
17 Islam?

18 A. He also would not eat pork, and he directly told me that
19 he was practicing Islam at home.

20 Q. So this would have been sometime in 2014?

21 A. Yes.

22 Q. I want to direct your attention to December of 2014.

23 MR. DURKIN: I'm sorry. December when?

24 MR. ZANZI: December 2014.

25 \\\

1 BY MR. ZANZI:

2 Q. Did defendant ask you to meet with her in Chicago?

3 A. Yes.

4 Q. For what purpose?

5 A. To visit with my son and to sign a paper for a passport --
6 a temporary passport is what I was told.

7 Q. Who paid for that trip?

8 A. Samantha did.

9 Q. And was your son present?

10 A. Yes.

11 Q. Did you get to spend some time with him?

12 A. Yes.

13 Q. Did defendant need your approval to obtain a passport for
14 your son?

15 A. Yes.

16 Q. Because you were his biological father?

17 A. Correct.

18 Q. Did she tell you why she needed a passport?

19 A. Yes.

20 Q. What was the reason?

21 A. Sam told me that she needed the passport to take M.S. to
22 visit Moussa's mother who was dying in Paris.

23 Q. In Paris?

24 A. Yes.

25 Q. In Paris, France?

1 A. Correct.

2 MR. DURKIN: I'm sorry. Could I either ask him to
3 restate that answer or have it read back. I didn't understand
4 part of it.

5 THE COURT: Could you repeat your answer, sir.

6 THE WITNESS: Yes. Which part of the answer?

7 BY MR. ZANZI:

8 Q. Let me re-ask the question. And I'll just ask that you --
9 you might need to move the microphone closer to you so we can
10 all hear you. Just speak as loud as you can.

11 What did defendant tell you was the reason she needed the
12 passport?

13 A. Samantha told me that she needed the passport to take M.S.
14 to visit Moussa's mother who was dying in Paris, France.

15 Q. Did you agree to allow your son to get a passport?

16 A. I did.

17 Q. And why is that?

18 A. Because even though we had issues in the past, I don't
19 have a problem with my son traveling to see the world, and I
20 thought we had resolved everything.

21 Q. At that time, did you have any problems with them going to
22 France?

23 A. No.

24 Q. Why is that?

25 A. I feel everyone should get out and see the world,

1 including my son, honestly, regardless of my relationship with
2 his mother.

3 Q. Would you have given approval if defendant said they were
4 going to Morocco to visit Moussa's parents?

5 A. No.

6 Q. Why is that?

7 A. I was told that Moussa's parents lived -- well, his
8 father. I don't know where his mother -- except for France --
9 but I was told that his father lived on a compound and they had
10 armed guards, so it just doesn't seem like a safe environment
11 for a child.

12 Q. Would you have given approval if defendant said they were
13 traveling to Hong Kong?

14 A. Yes.

15 Q. Why is that?

16 A. For the same reason that I would give approval for France,
17 just to see the world.

18 Q. Did you believe defendant when she said she was going to
19 France?

20 A. Yes.

21 Q. Did you communicate with defendant via Facebook Messenger
22 when she was abroad?

23 A. Yes.

24 Q. I'm going to show you a document that has been previously
25 submitted to the Court as Exhibit 4 to the government's

1 sentencing memorandum. And have you seen this before?

2 A. (No response.)

3 Q. This is a Facebook record, correct?

4 A. Correct.

5 Q. You have seen this document before?

6 A. Yes.

7 Q. This is a communication between you and the defendant
8 occurring January 16, 2015; is that correct?

9 A. Yes.

10 Q. And there is -- on the bottom of the page, you state,
11 "You're also in a country that was just attacked by terrorists
12 last week in Paris," correct?

13 A. Correct.

14 Q. Can you explain the context of what's happening in this
15 communication and why you made that statement?

16 A. I made the statement because I was trying to get ahold of
17 Samantha, and she would not reply back to my text messages or
18 Messenger.

19 Q. Why were you trying to get ahold of her?

20 A. Because of the terrorist attack, and I was under the
21 impression that she was in Paris at the time.

22 Q. Was there a terrorist attack that had happened around this
23 time in France that had made the news?

24 A. Yes.

25 Q. During the course of this communication, did she ever

1 admit to you that she was not actually in Paris, France, or in
2 France at all?

3 A. No, she did not.

4 Q. Has she ever admitted to you that she wasn't in France
5 during this time?

6 A. No.

7 Q. Did she do anything or say anything to indicate that she
8 was in France?

9 A. No.

10 Q. Or that she was still in France? Did she lead you to
11 believe that she was still in France?

12 A. Correct.

13 Q. What did she say?

14 A. As you can see here, she says that she was the one that
15 conducted the attack, and then she did, like, an LOL and a
16 smiley face. But I was under the impression that she was in
17 France.

18 Q. That was just a joke? You took that as a joke, correct?

19 A. Right.

20 Q. But that led you to believe that she was still in France?

21 A. Correct.

22 Q. When defendant asked for your permission to approve a
23 passport for your son, did she tell you that her husband,
24 Moussa, wanted to join ISIS?

25 A. No.

1 Q. Now, sir, have you ever served in the U.S. military?

2 A. Yes.

3 Q. What branch?

4 A. The Navy.

5 Q. And when was that?

6 A. May of 2001 until August of '04.

7 Q. And were you ever deployed to the Middle East or anywhere
8 near Syria?

9 A. In the Persian Gulf twice, Operation Enduring Freedom and
10 Operation Iraqi Freedom.

11 Q. And did the defendant know that about you?

12 A. Yes.

13 Q. How did you become aware that your son was in Syria?

14 A. I was contacted by the FBI.

15 Q. And did you ever receive videos or images of your son in
16 Syria?

17 A. Yes.

18 Q. How did you receive these?

19 A. Via email from Samantha's sister, Laurie Elhassani.

20 Q. And describe the videos and what you saw?

21 A. The first video I saw appeared as a propaganda film for
22 ISIS, and my son was walking around with a high-powered rifle
23 practicing the movements of the rifle, looking down the scope,
24 walking around rubble, and I believe that is the same video
25 that he addressed Donald Trump and called him the puppeteers of

1 the Jews and a bunch of other -- just a terrible video.

2 Q. And were there other, sort of, like, homemade videos that
3 you saw as well?

4 A. Yes. The second video I saw was my son putting on a
5 suicide vest -- or holding the suicide vest and speaking with
6 someone off camera about what he was going to do and to say
7 that he was an American and when they come to rescue him to
8 blow them up.

9 Q. What was your reaction to that?

10 A. I was devastated by that. I kind of had a slight
11 emotional breakdown. I had to call my boss. I was working out
12 of state at the time, and he had to send me back home and put a
13 relief in. I took time off work.

14 Q. How did you feel when you found out that -- when you first
15 found out that your son was in Syria?

16 A. I was in disbelief. Angered mostly, at first, and then,
17 just -- I didn't know how to take it, to be honest.

18 Q. Where does your son reside now?

19 A. He currently lives with me. I have sole custody.

20 Q. How long has he been living with you?

21 A. For the last year.

22 Q. And how is he doing?

23 A. He's doing -- he's doing well now.

24 Q. How was he doing when he first came to you?

25 A. When he first came to me, he was very quiet, very scared,

1 malnourished. His weight was very low. And he's very
2 standoffish from large crowds, and even peers his age, he
3 doesn't really -- still doesn't communicate with them or really
4 have any social interaction.

5 Q. Does he have any trouble sleeping or anything like that?

6 A. Yes. He does have trouble sleeping in the dark, and it
7 seems that he always has to have a TV on or some background
8 noise.

9 Q. Anything else that is a trigger for him or something he
10 struggles with?

11 A. Yes. Anytime there's going to be fireworks or anything
12 set off, we have to give advance notice. If he's in the house
13 and just hears fireworks, he kind of goes a little bit into a
14 panic mode, and he -- unfortunately, he probably feels like
15 he's being bombed or that bombs are out there.

16 Q. You mentioned that he's doing better. What challenges --
17 has he gone through therapy?

18 A. Yes. He's been through a year of therapy and requested
19 not to go anymore, so I have stopped therapy on his request.
20 And he's just -- just socially, he'd rather stay online
21 constantly than actually have face-to-face interactions with
22 other kids.

23 Q. Does he talk about Syria?

24 A. He talks about Syria. He's -- yes.

25 Q. What does he tell you? What has he been willing to share

1 with you about it?

2 **A.** He's told me stories of seeing his friends, children his
3 age, blown up in car bombs; seeing Moussa attacked by a drone;
4 seeing buildings exploded; people shot; ISIS shootouts with
5 Americans.

6 **Q.** Has he talked about Moussa? What has he said about him?

7 **A.** All he really says about Moussa is that he was mean and
8 that he wasn't as tough as he acted.

9 **Q.** Has he talked about the trips to Hong Kong? Did he say
10 anything about that?

11 **A.** Yes. He did say that he went to Hong Kong with his mother
12 and that he knew that they were going over there to take money
13 to someone.

14 **Q.** Did he say what that was for or no?

15 **A.** He just said that it was for what they were doing in
16 Syria, what they were going to go do in Syria.

17 **Q.** Did he have any understanding of what that was?

18 **A.** Yes.

19 **Q.** Does he talk about the videos that were created of him?

20 **A.** He does not. The only thing that he says about them is
21 that he hopes that no one sees them.

22 **Q.** What about the --

23 **THE COURT:** I'm sorry. I didn't hear what you just
24 said.

25 **THE WITNESS:** His fear is that people will see them

1 and recognize him in the community.

2 **THE COURT:** I see.

3 **BY MR. ZANZI:**

4 **Q.** What about defendant, has he said anything to you about
5 her?

6 **A.** That he doesn't want to see her or talk to her and that he
7 doesn't know when or if he will ever decide to.

8 **Q.** Okay.

9 **MR. ZANZI:** Nothing further, Your Honor.

10 **THE COURT:** Mr. Durkin.

11 **CROSS-EXAMINATION**

12 **BY MR. DURKIN:**

13 **Q.** Can you see me?

14 **A.** Yes.

15 **Q.** Okay. I didn't want you to think I was trying to avoid
16 you, but you have to forgive me. I have never had to
17 cross-examine under these circumstances. Usually we use the
18 podium and you are up there, so this is a little unusual. If I
19 seem like I'm a little out of my element, bear with me, okay?

20 **A.** All right.

21 **Q.** I think you said that you had met Samantha in either 2003,
22 '4, or '5; am I right?

23 **A.** It was in 2000 -- late 2004, 2005-ish, I believe.

24 **Q.** And that was in what state?

25 **A.** Arkansas, Fayetteville.

1 Q. And you were raised in Florida, if I'm right. Am I right?

2 A. Correct.

3 Q. Okay. And the reason you were in Arkansas is because you
4 and your brother got arrested for drugs and got out on bond; am
5 I right?

6 A. No. Who would go to a state to get arrested?

7 Q. I'm sorry?

8 A. No, I did not go to a state to get arrested.

9 Q. No, no. I didn't say you went to the state to get
10 arrested.

11 A. The reason I was in Arkansas was because I was traveling
12 across the country; and, yes, I went to jail in Arkansas for
13 possession of under 3 grams of marijuana, seeds.

14 Q. I'm not trying to be critical. Just bear with me.

15 The reason you ended up in Arkansas was because you had
16 been arrested in Arkansas, correct?

17 A. No.

18 Q. Did you plan to stay in Arkansas when you left to go
19 across the country?

20 A. No.

21 Q. What caused you to stay in Arkansas?

22 A. We decided to get an apartment there and live there, my
23 brother and myself.

24 Q. Okay. And the other reason you stayed was because you met
25 Samantha, right?

1 A. Correct.

2 Q. Okay. And the fact of the matter is is that the two of
3 you were very much in love with each other back then, weren't
4 you?

5 A. Yes.

6 Q. Okay. And I think you said you still stay in touch with
7 her parents, correct?

8 A. Correct.

9 Q. You have a good relationship with them, right?

10 A. Yes.

11 Q. And the truth of the matter is is that you still really
12 care about Sam, don't you?

13 A. No.

14 Q. You don't?

15 A. I do not.

16 Q. When did that change?

17 A. When she decided to join an organization and take my son
18 out of the country.

19 Q. Do you think she joined ISIS?

20 A. Yes.

21 Q. And what is that based on?

22 A. The fact that she was in Syria in an ISIS camp. You don't
23 accidentally end up in Syria, I believe.

24 Q. Well, let me ask you this. Do you know Moussa at all?

25 A. I do not.

1 Q. Okay. You testified that up until Moussa came into the
2 picture, even though you guys were separated, you had a pretty
3 good relationship; am I right?

4 A. Correct.

5 Q. Okay. And at that point you still had -- at least between
6 the two of you, you had mutually good feelings about each other
7 even though you had separated, right?

8 A. We were cordial to each other, yes.

9 Q. All right. Well, you were more than cordial because you
10 testified earlier about coming to Chicago over the passport
11 issue, right?

12 A. Yes.

13 Q. Okay. And even then you had strong feelings for Samantha,
14 didn't you?

15 A. No.

16 Q. You didn't ask her to come to your hotel room?

17 A. She insisted on coming to my hotel room because my son was
18 there, and she wanted to see the area that we were at.

19 Q. You never asked her to come alone to your hotel room to
20 have sex while your son and someone else was in the swimming
21 pool?

22 A. I did not.

23 Q. Okay. Let me ask this. Moussa insisted that two women go
24 along with Sam for this meeting in Chicago, correct?

25 A. I have no idea.

1 Q. Well, did you notice that there were two women along?

2 A. Yes.

3 Q. And these were people who worked for Moussa, correct?

4 A. I also do not know.

5 Q. Okay. Did Sam explain to you that the reason she couldn't
6 come to your room by herself was because she had been under the
7 watch of these two people at Moussa's behest?

8 A. No.

9 Q. She never told you that?

10 A. No.

11 Q. But these people were pretty much in constant contact with
12 Samantha, weren't they?

13 A. Yes.

14 Q. Okay. Do you know anything about domestic abuse?

15 A. No.

16 Q. Do you know anything about the psychological affects of
17 controlling behavior?

18 A. No.

19 Q. Do you think that it was Samantha who decided to begin to
20 cut off your communication with M.S., or was it Moussa?

21 A. I'm not sure.

22 Q. Well, we do know, don't we, that up until Moussa was in
23 the picture there was no interference with your visitation with
24 M.S., was there?

25 A. No.

1 Q. Do you think it's possible that it was Moussa that was
2 controlling her rather than her deciding that?

3 A. I'd rather not speculate.

4 Q. Well, you're speculating that she joined ISIS, aren't you?

5 A. No. She was in Syria in an ISIS camp.

6 Q. Well, would it surprise you to know she was not ever in an
7 ISIS camp, she was in an ISIS prison where she was tortured and
8 raped?

9 A. No.

10 Q. Have you ever heard that?

11 A. Yes.

12 Q. Who told you that?

13 A. A reporter did.

14 Q. And do you think that ISIS would rape and torture their
15 own members?

16 A. Yes.

17 Q. Okay. So you don't dispute that she was raped and
18 tortured in Syria, do you?

19 A. I don't affirm or dispute it. I don't know. I wasn't
20 there.

21 Q. Okay. So since you weren't there, you wouldn't know
22 whether she was a member of ISIS either, would you?

23 A. Correct.

24 Q. You mentioned in your testimony that you noticed, the time
25 your son came to visit you in 2014, that there had been some

1 changes in him, right?

2 A. Correct.

3 Q. And all of a sudden he was acting like he was a practicing
4 Muslim, right?

5 A. Correct.

6 Q. Well, you know that Samantha wasn't a practicing Muslim,
7 right?

8 A. I'm not sure.

9 Q. Well, did you ever know her to practice Islam?

10 A. No.

11 Q. Did she ever tell you she was?

12 A. No, but I didn't ask her either.

13 Q. I see.

14 When your son came to see you in 2014 and started acting
15 like a Muslim and wanting to pray, he was only four years old,
16 wasn't he?

17 A. Yes -- no.

18 Q. I'm sorry?

19 A. I believe he was around five or six by then.

20 Q. What year was he born?

21 A. '07, I believe.

22 Q. What year was he born?

23 A. '07, I believe.

24 Q. So he might have been seven then?

25 A. Correct.

1 Q. Okay. Did he tell you that it was his mother that was
2 forcing Islam on him?

3 A. He didn't tell me anyone was forcing Islam on him.

4 Q. What did you surmise?

5 A. I just assumed that he was practicing Islam because he
6 lived with someone else who practiced Islam.

7 Q. And that someone else was Moussa, right?

8 A. Correct.

9 Q. Now, you said that you learned that your son was in Syria
10 because you were contacted by the FBI, right?

11 A. Correct.

12 Q. And you were contacted several times while he was
13 overseas; am I right?

14 A. Correct.

15 Q. First time being in March of 2016, correct?

16 A. I'm not sure of the exact date.

17 Q. Would you take my word for it if I told you that's the
18 date that was on a memo that we have?

19 A. Yes.

20 Q. By the way, when you and Samantha met, she was only 19,
21 right?

22 A. I don't recall her age, to be honest.

23 Q. Well, you were 22; am I right?

24 A. Correct.

25 Q. Would you agree with me that Samantha's relationships with

1 men, perhaps other than your relationship, have been rather
2 disastrous?

3 A. Some of them, but I'm not aware of all her relationships.

4 Q. Well, you know that she's had multiple relationships,
5 hasn't she?

6 A. Yes.

7 Q. In fact, that was an issue between the two of you, right?

8 A. No.

9 Q. Well, I thought you said that one of the issues, when you
10 answered Mr. Zanzi, was that she was staying out and partying
11 all night?

12 A. Correct.

13 Q. Well, wasn't there a time, that you were aware of, because
14 you were there, when she was -- ended up in a sexual assault by
15 one of her bosses and a secretary at a place where --

16 A. She told me --

17 Q. Hold it.

18 -- at a place where you also worked?

19 A. Yes.

20 Q. And when was that?

21 A. I'm not sure when that was.

22 Q. Where were you working?

23 A. I was working for an independent contractor in Arkansas.

24 Q. Was that Springdale?

25 A. Yes.

1 Q. Okay. And that was pretty traumatic for the both of you,
2 wasn't it?

3 A. Yes.

4 Q. In fact, after that, you sobbed in her arms and apologized
5 for not being able to protect her; am I right?

6 A. No.

7 Q. Did you -- what happened from your vantage point or as you
8 recall?

9 A. As I recall it -- Samantha told me what happened. I did
10 not witness the situation. And then shortly thereafter, we
11 left Arkansas for Florida. She no longer felt safe where we
12 were.

13 Q. Okay. Now, you're aware of the fact, are you not, that
14 she ran away from home with someone when she was 16 or 17 years
15 old, right?

16 A. Yes.

17 Q. Okay. You're also aware of the fact that she was sexually
18 abused when she was young, correct?

19 A. No.

20 Q. You're not aware of that?

21 A. No.

22 Q. Would you -- you wouldn't dispute that though, would you?

23 A. I don't have anything to say about it. Sam never
24 mentioned being abused as a child.

25 Q. Okay. But you were aware that at 16 she ran off with some

1 guy and, ultimately, had to get her parents' permission to get
2 married; am I right?

3 A. Yes.

4 Q. You're also aware that she's had all these multiple bad
5 relationships with men, correct?

6 A. Yes.

7 Q. Do you know anything -- let me ask you something. Hold
8 on.

9 When you were first contacted -- how did you end up coming
10 to testify today?

11 A. I was --

12 Q. Did you ask to come here, or did the government ask you to
13 come?

14 A. I was sent a subpoena to appear. I was asked to appear.

15 Q. So you didn't volunteer to come here today, right?

16 A. Correct.

17 Q. Did they tell you why they wanted you to come?

18 A. To testify.

19 Q. Did they tell you what they wanted you to testify about?

20 A. No.

21 Q. When did they first explain to you what they were going to
22 ask you today?

23 A. Last night we discussed --

24 Q. Who was that that explained what they wanted?

25 A. Abizer did not explain what he wanted. He explained to me

1 to tell the truth while I'm in the courtroom.

2 Q. Okay. That's fair.

3 Did Abizer show you any of the pleadings in this case?

4 A. He did not.

5 Q. Did he tell you what the dispute at this sentencing is
6 about?

7 A. He did not.

8 Q. And he didn't show you any of the psychiatric reports that
9 have been submitted about Samantha?

10 A. No, sir.

11 Q. Okay. Let me just ask you this. And I'm referring to one
12 of the reports. I want to see whether you would agree with
13 this -- page 2 of the January 17, 2020 -- report.

14 Would you agree with this statement from the report?

15 "Starting with high school, she, Samantha, engaged in
16 sequential relationships, marriages, and living arrangements
17 that were destabilizing and attributable to the consequence of
18 abuse and neglect." Would you agree with that?

19 A. Can you re-read that? I'm not sure what all of that
20 means.

21 Q. "Starting with high school, she engaged in sequential
22 relationships, marriages, and living arrangements that were
23 destabilizing and attributable to the consequences of abuse and
24 neglect." Would you agree with that?

25 A. I'm not a doctor to agree with it. I'm not sure what

1 leads to these things, so I don't -- I don't know.

2 Q. I'm just talking about that factual statement. You don't
3 disagree with that, do you?

4 MR. ZANZI: I object to the foundation. He clearly
5 has no basis for knowing.

6 THE COURT: Sustained.

7 BY MR. DURKIN:

8 Q. Well, would you agree with this statement? "Her marriages
9 and relationships as a young adult were unstabled and troubled,
10 including the suicide of a man that had had impregnated her."
11 Would you agree with that?

12 A. I'm not sure even what you're speaking about, someone that
13 committed suicide or anything.

14 Q. Are you aware of a relationship in which she became
15 impregnated, other than yours and with Moussa?

16 A. Yes.

17 Q. Okay. And when was that?

18 A. That was just before she left to Indiana to meet with
19 Moussa, and she said his name was Raphael. And she said that's
20 when she left to Indiana to get an abortion.

21 Q. Okay. And would you agree that -- or if you can -- that
22 her marriage to Moussa was controlled and abused and he
23 manipulated her?

24 A. I wasn't present for any of her relationship with Moussa,
25 physically, so I'm not sure what happened on that side.

1 Q. Did she ever discuss with you how manipulative he was?

2 A. She did not.

3 Q. She never told you that?

4 A. She did not.

5 Q. Did you ever ask her what happened, why there was a change
6 in the -- in your ability to see M.S. once she became married
7 to Moussa?

8 A. I asked her -- yes.

9 Q. What did she say?

10 A. She just said that Moussa would stand and monitor phone
11 calls but that was her only reasoning.

12 Q. Did you find it odd that Moussa would stand and monitor
13 her phone calls with you?

14 A. No.

15 Q. Why not?

16 A. I've witnessed many two-family homes, and I have seen that
17 a lot in my lifetime where the other family member in the new
18 family is insecure so he monitors, or she monitors, all the
19 phone calls between the child and the parent.

20 Q. Now, one of the other reasons that you guys broke up was
21 that Sam wanted more children and you didn't; am I right?

22 A. No.

23 Q. Did you guys ever discuss having more children?

24 A. No.

25 MR. DURKIN: Could I have a second, Judge?

1 **THE COURT:** Sure.

2 Noel, can you turn on the white noise, please.

3 **MR. DURKIN:** She's going to write a note.

4 **THE COURT:** Okay.

5 **BY MR. DURKIN:**

6 **Q.** So were you ever trying to have another child with Sam?

7 **A.** I do believe that we tried, yes.

8 **Q.** And when was that in relationship to when you broke up?

9 **A.** I'm not sure.

10 **Q.** Okay. And you also have a son from another relationship
11 who is older than M.S., correct?

12 **A.** Correct.

13 **Q.** How old is that son now?

14 **A.** Eighteen.

15 **Q.** And did he live with you?

16 **A.** No.

17 **Q.** Did he grow up with you?

18 **A.** He did not.

19 **Q.** He grew up with his mother?

20 **A.** Correct.

21 **Q.** Do you see him?

22 **A.** I do sometimes. I visit him. He lives in Florida.

23 **Q.** When he was growing up, how often did you see him?

24 **A.** Quite often while I lived in Florida. Not so often once I
25 moved out of Florida.

1 Q. You moved out of Florida in either 2003 or 2004; am I
2 right?

3 A. Sounds right, yes.

4 Q. And how old was he when you moved out of Florida, your
5 son?

6 A. He was still young. I'm not sure the age. I think he was
7 around four. Three or four, I'm not sure.

8 Q. Did you ever provide support money for M.S.?

9 A. Yes.

10 Q. When?

11 A. I don't have the dates and times of all the money I sent
12 Samantha.

13 Q. You didn't send any money once she was married to Moussa,
14 did you?

15 A. Once she was married to Moussa, I went to send her money;
16 and Sam said not to worry about it, they no longer required it.
17 I offered to put M.S. on my healthcare. She said it was not an
18 issue.

19 Q. One of the times you talked to the FBI was on February 10
20 of 2017, right?

21 A. I'm not sure of the exact dates when I spoke with the FBI.

22 Q. Did you speak to them once in Oklahoma City?

23 A. Yes.

24 Q. Would you take my word for it that it was February 10,
25 2017?

1 A. Yes.

2 Q. You told them that you believed M.S. had broken his arm
3 and that M.S. told you that Moussa and Sam were abusive; is
4 that right?

5 A. No. I did say that M.S. did have his arm broke and that
6 it was Samantha.

7 Q. That what?

8 A. That he said it was Samantha.

9 Q. That broke his arm?

10 A. Correct.

11 Q. M.S. told you that Samantha broke his arm?

12 A. Correct.

13 Q. And what did you do about that?

14 A. I called Samantha and spoke with her, and she said that it
15 wasn't true and that it did not happen. I later asked M.S.,
16 and he said that it was a lie. I also told the FBI the same
17 thing and that Sam said nothing happened to him. And he
18 apologized to her later for lying, he says.

19 Q. That was M.S. that said that?

20 A. Correct.

21 Q. And did you also tell the FBI, then, that you knew from
22 M.S. that Moussa took M.S. shooting and got him involved in the
23 martial arts; am I right?

24 A. Yes.

25 Q. Did you approve of that?

1 A. Yes.

2 Q. So it was okay to you that Moussa was teaching your son
3 how to shoot?

4 A. Correct.

5 Q. And as I think you said, you have no idea what happened
6 when Sam and M.S. -- I'm sorry -- your son were in Turkey, do
7 you?

8 A. Can you repeat the question.

9 Q. You have no idea what happened when your son and Samantha
10 were in Turkey with Moussa, correct?

11 A. Correct.

12 Q. Okay. And has anybody told you about an incident at the
13 border where Sam had to make an instantaneous decision about
14 getting in a white van and going with Moussa and the children
15 or staying behind and watching him take the children into
16 Syria? Anybody ever tell you that?

17 A. Yes.

18 Q. Who?

19 A. A reporter.

20 Q. You have any reason to doubt that?

21 A. Yes. Well, I mean, that's an odd question to ask 'cause
22 it's opinion based, and we're trying to operate off of facts.
23 And I don't -- it's not good to ask my opinion about something
24 like that.

25 Q. Well, that's for me to decide, and the judge. So my

1 question was, you don't have any reason to dispute what that
2 reporter told you, do you?

3 A. No, I wasn't there to witness it.

4 Q. Right. Just like you weren't aware of anything that was
5 going on in the Moussa Elhassani household in relationship to
6 Samantha, correct?

7 A. Yes.

8 Q. Just like you have no idea how much he abused her or
9 whether he abused her, do you?

10 A. Correct.

11 Q. All you know is she became a different person when she got
12 married to Moussa, correct?

13 A. Yes.

14 Q. And that affected you dramatically, didn't it?

15 A. Yes.

16 Q. Because you cared for her, correct?

17 A. No, because I cared for my son.

18 Q. Well, you didn't make any efforts to get your son back,
19 did you?

20 A. Make an effort to go into war-torn Syria, is that what you
21 are asking me?

22 Q. No, before they went to Syria.

23 A. No. I spoke with M.S. He said that he was happy there.
24 He didn't want to come away from his mother and his other
25 siblings.

1 Q. Okay. But did you also testify earlier that somehow M.S.
2 said something about Moussa thinking he was a tough guy but he
3 really wasn't? Did I hear that correctly?

4 A. Correct, in Syria.

5 Q. That was in Syria?

6 A. Correct.

7 Q. Did he tell you what he based that on?

8 A. Gun fights with Americans.

9 Q. Okay. But he certainly didn't tell you that his mother
10 was engaged in any gun fights with Americans, did he?

11 A. No.

12 Q. Did he ever talk about -- does he ever talk about what Sam
13 did to save the lives of some Yazidis?

14 A. No.

15 Q. Does he ever mention them?

16 A. No.

17 Q. Have you ever heard of them?

18 A. The name is not familiar to me.

19 Q. Did you ever hear about some Yazidis -- these are a
20 nationality -- two women that were brought into the household
21 while they were in Syria?

22 A. Yes.

23 Q. Okay. Who told you about that?

24 A. The reporter told me that Sam told him, and I saw the
25 interview on CNN about some people that were staying with them.

1 Q. But M.S.'s never discussed that with you?

2 A. No.

3 Q. Okay. And has M.S. ever discussed what happened when they
4 were trying to get out of Syria?

5 A. M.S. does not discuss anything that happened in Syria
6 almost at all except for the few stories that I've already
7 mentioned.

8 Q. Okay. And you told us that M.S. had been in therapy but
9 wanted to stop, correct?

10 A. Correct.

11 Q. And that was okay with you?

12 A. Yes.

13 Q. Why is that?

14 A. Because the therapist didn't recommend ongoing treatment.

15 Q. Oh, so it was the therapist that didn't recommend it?

16 A. No. When I spoke to the therapist about ending treatment,
17 they were fine with M.S.'s -- where he was at the time.

18 Q. And that was okay with you too?

19 A. Yes.

20 Q. Okay. And you have remained very close with her family,
21 particularly her father, correct?

22 A. Yes.

23 Q. And he's here in the courtroom today; am I right?

24 A. Yes.

25 Q. In fact, he even offered to bring you up here together to

1 save money, correct?

2 A. Correct.

3 Q. But you had already had a ticket from the government,
4 right?

5 A. Correct.

6 Q. Otherwise, you would have come up here with him, wouldn't
7 you?

8 A. It's possible, yes.

9 Q. Okay. 'Cause the two of you are close, right?

10 A. Yes.

11 Q. He's a good guy, right?

12 A. Yes.

13 MR. DURKIN: That's all I have.

14 THE COURT: Do you have any redirect, Mr. Zanzi?

15 MR. ZANZI: A few questions, Your Honor.

16 THE COURT: Okay. Why don't we do it then.

17 **REDIRECT-EXAMINATION**

18 **BY MR. ZANZI:**

19 Q. At the time that -- in 2014, when your son visited with
20 you and you observed that he was practicing Islam, did you have
21 any problem with that?

22 A. I didn't agree with it, and I mentioned it to Sam that I
23 did not agree. But I'm not a xenophobe, so just because he's
24 practicing a religion doesn't mean anything bad to me.

25 Q. Okay. And did you have any concerns about his -- you

1 explained that the nature of your -- how frequent you were able
2 to spend time with him had changed and things had changed. Did
3 you have any reason to believe that he was in danger or unsafe
4 or not in a good situation with Moussa and defendant?

5 **A.** I did not. Sam made everything seem very kosher.

6 **Q.** And any information that you have testified about
7 defendant's past relationships, what is that based off of, your
8 own personal knowledge or what defendant told you?

9 **A.** What the defendant told me.

10 **Q.** So you don't personally know if they are true or not,
11 correct?

12 **A.** Correct.

13 **Q.** Based on what you know of the defendant, is she someone
14 who makes her own decisions and is independent?

15 **A.** Yes.

16 **Q.** Based on what you know about her and her character, do you
17 believe that she went there willingly to Syria, knowingly?

18 **A.** I do.

19 **Q.** And why do you say that?

20 **A.** Sam is very free-spirited, and she doesn't generally
21 just -- I don't know how to explain it, honestly. I just --
22 Samantha usually doesn't just take directives from people and
23 follow them.

24 **MR. ZANZI:** Nothing further, Your Honor.

25 **THE COURT:** Mr. Durkin, do you have anything else

1 based on that?

2 MR. DURKIN: Yes.

3 RECROSS-EXAMINATION

4 BY MR. DURKIN:

5 Q. I thought that when I questioned you you said you didn't
6 know what happened at the border and you didn't know what
7 happened in Turkey; am I right?

8 A. Correct.

9 Q. So what is it that makes you say she went to Syria
10 willingly or not under the control or the thumb, the emotional
11 thumb, of Moussa Elhassani? What makes you say that?

12 A. As stated, Sam is usually very independent and doesn't
13 follow directives. Also, my experience with flying is that
14 your destination is on your ticket and you know where you're
15 going.

16 Q. Well, this ticket went to Morocco. Did you know that?

17 A. No.

18 Q. Did somebody tell you she had a ticket for Turkey and only
19 Turkey?

20 A. No.

21 Q. So why did you just say what you just said? What makes
22 you think she only had a ticket to Turkey?

23 A. She -- 'cause she did fly to Turkey. I never said it was
24 her only ticket.

25 Q. You didn't know -- so the government didn't tell you that

1 there was a connecting flight to Morocco?

2 A. No.

3 Q. Do you know anything about Moussa and Sam looking for
4 houses in Morocco to live?

5 A. I do not, no.

6 Q. You never heard that?

7 A. No.

8 Q. Nobody told you that?

9 A. No, sir.

10 Q. And you agree with me that you know nothing about domestic
11 abuse and the psychological affects of living with a
12 controlling man in an environment -- in a controlling
13 environment? You know nothing about that, correct?

14 A. Correct.

15 Q. So if a psychiatrist were to find that that was true, you
16 wouldn't quarrel with that, would you?

17 A. No.

18 Q. Thank you.

19 THE COURT: You have anything else, Mr. Zanzi?

20 MR. ZANZI: No, Your Honor.

21 THE COURT: Sir, thank you. You may step down. You
22 are excused.

23 Mr. Zanzi, you told me that you have also a couple of
24 video clips.

25 MR. ZANZI: One video. It is a minute and, like, 15

1 seconds.

2 **THE COURT:** Why don't we go ahead and do that. Then
3 I'm going to take -- we'll probably just take a lunch break at
4 this point because it's five minutes to 12, and after lunch,
5 we'll hear the defense factual proffer.

6 **MR. DURKIN:** We're not going to call any witnesses.

7 **THE COURT:** Okay. I was under the impression you
8 were going to proffer some information about -- from this
9 Dr. Xenakis.

10 **MR. DURKIN:** Just what he's already said.

11 **THE COURT:** Okay.

12 Are you going to contest any of that by way of, you know,
13 a witness or anything of the sort?

14 **MR. ZANZI:** No.

15 **THE COURT:** Can we just do that all when we do our
16 allocution here?

17 **MR. ZANZI:** Sure.

18 **THE COURT:** Okay. All right. So let's just watch
19 the video and then we'll take a break.

20 **MR. ZANZI:** Your Honor, I'm about to play a video.
21 It's a clip from -- wait a minute.

22 Let me set the foundation. This is a video from July 24,
23 2018. It was tendered in discovery. I provided this to
24 defense counsel early this morning, what the Bates number was.
25 It is the interview of Special Agent D'Amico on July 24, 2018.

1 We had another clip from that interview which we submitted as
2 part of the sentencing memorandum. It's submitted in response
3 to the video that was provided by defense counsel where defense
4 counsel met with the parents -- mother in Morocco.

5 (Video played.)

6 **MR. ZANZI:** That's it, Your Honor.

7 **THE COURT:** Okay. Can you -- I watched the video of
8 Mr. Durkin interviewing the mother-in-law. Frankly, I'm having
9 a little hard time hearing that.

10 **MR. ZANZI:** Yes.

11 **THE COURT:** Tell me the significance of what I just
12 heard in conjunction with the video that I'm referencing.

13 **MR. ZANZI:** Yeah. So, one, the defendant was asked
14 did they visit any properties when she was -- in January of
15 2015, before she went to Hong Kong, she visited Morocco. It
16 was herself and her two children. Moussa couldn't come because
17 of his visa issues. She went there. It is our position that
18 they weren't -- she was never intending to buy property. That
19 wasn't something that they were planning to do. And the -- and
20 also Abdelhadi's wife was there too.

21 Defendant flew out to Morocco, met with the mom, and said
22 that they went and visited properties, they actually visited
23 properties, to suggest that that was something that she was
24 planning and intending to do.

25 This video she said they never went to visit properties.

1 Defendant admitted to the FBI agent when she went out there
2 they never went to visit any properties.

3 One, it's to show the credibility of that video that
4 defense provided, but in terms of its significance in this
5 case, it has minimal significance in this case, Your Honor,
6 because she went to Hong Kong. She was charged for going to
7 Hong Kong and moving money, and in her plea agreement she
8 said she moved that money. Yeah.

9 **THE COURT:** Okay. I don't want to cut you off, but
10 you are kind of straying into argument. You have answered my
11 question.

12 **MR. ZANZI:** Fair enough. I just wanted you to
13 understand the context of it. Okay. Fair enough.

14 **THE COURT:** Understand.

15 Do you want to say anything in response to that?

16 **MR. DURKIN:** I'd like to say a lot of things, but --
17 this is one of those things that, you know -- mother making it
18 up? The note that I just got is that we did go to locations.
19 I wasn't allowed to look at actual apartments because Moussa
20 wouldn't allow it, the actual apartments. So if I asked the
21 wrong question of the mother or whatever, then that's on me.
22 But I certainly -- I didn't go there to interview this witness
23 for a hearing. I went there to meet with them to get a sense
24 of what was going on, and that's what she volunteered to me.

25 And this idea that somehow they want to take a snippet out

1 of an interview, one minute out of a whole interview, when she
2 just gets off a plane, she's just been separated from her
3 children, she's obviously a mess. God knows when she had
4 sleep, and somehow -- see, now she's telling the truth, this
5 person who doesn't tell the truth.

6 **THE COURT:** Okay. I understand.

7 **MR. DURKIN:** Got it.

8 **THE COURT:** And I'll hear you guys out entirely --

9 **MR. DURKIN:** Thank you.

10 **THE COURT:** -- at the appropriate time.

11 Is that all that you have by way of a factual proffer?

12 **MR. ZANZI:** Yes, Your Honor. Obviously, it depends
13 on what defense has whether or not we have anything in
14 rebuttal, but at this point, we have nothing further.

15 **THE COURT:** Again, that's why I was asking. It
16 sounds -- I thought we had agreed that -- I'm just going to
17 hear from them once.

18 **MR. ZANZI:** Okay.

19 **THE COURT:** Whether it be by way of -- they are going
20 to proffer information to me as part of their allocution.

21 **MR. ZANZI:** Okay.

22 **THE COURT:** Of course you'll have your allocution as
23 well. But my intention is not to allow you then to call
24 witnesses to sort of re- --

25 **MR. ZANZI:** We are not planning on recalling any

1 witnesses.

2 **THE COURT:** You want an opportunity to address those
3 things.

4 **MR. ZANZI:** Yes.

5 **THE COURT:** We on the same page here?

6 **MR. DURKIN:** I hope so, but let me make myself clear,
7 if I haven't.

8 We have put evidence in via our pleading. I suppose
9 that's, technically, a proffer because we didn't have a trial
10 and you haven't made evidentiary rulings; but since you can
11 take everything into account, those are the facts we would be
12 proffering. But I don't want to have to go through the
13 pleading and say, now, Judge, we're proffering to you
14 exhibit -- so there's --

15 **THE COURT:** Listen, I have read everything that
16 you --

17 **MR. DURKIN:** I can't make --

18 **THE COURT:** Let me just say I have read everything
19 that you submitted, and I'm taking it all into consideration.

20 **MR. DURKIN:** Good. Because I have re-read our
21 response, and I don't -- honestly, don't think I can say it any
22 better than we said it in the response.

23 **THE COURT:** All right. So let's be back here at
24 one o'clock. We'll take an hour for lunch, and we'll pick up
25 at that time with -- I will hear from you first, Mr. Durkin.

1 Then I will hear from Ms. Elhassani, and then I'll hear from
2 the government. And then I'll be ready to give you my -- hand
3 down my sentence.

4 **MR. DURKIN:** That's fine. Can we just talk with her
5 for a minute on the white noise?

6 **THE COURT:** Guys, can you let --

7 **THE MARSHAL:** Yes, Your Honor.

8 (A recess was had at 11:58 a.m.)

9 (The following proceedings were held in open court
10 beginning at 1:04 p.m., reported as follows:)

11 **DEPUTY CLERK:** All rise.

12 **THE COURT:** You can be seated.

13 All right. We're back on the record in United States
14 versus Elhassani, Cause No. 2:18-CR-33. Continuing the
15 sentencing hearing.

16 Okay. Mr. Durkin, I'm going to turn it over to you now.

17 **MR. DURKIN:** I'm sorry, Judge. I thought the
18 government goes first.

19 **THE COURT:** No, you go first in my court. It goes
20 you and then it goes Ms. Elhassani and then I hear from the
21 government.

22 **MR. DURKIN:** I'm sorry. I'm just used to the other
23 way around.

24 **THE COURT:** Really? Do they do it differently up
25 there?

1 **MR. DURKIN:** I think, for the most part, it's the
2 government goes first.

3 **THE COURT:** Well, you're up.

4 **MR. DURKIN:** When it Rome, you do what the Romans do.

5 **THE COURT:** I suppose.

6 **MR. DURKIN:** I can do that.

7 Although, really -- and I'm not usually at a loss for
8 words, as you know -- I'm kind of at a loss for words here.

9 As I said earlier, I really think we said everything that
10 had to be said in our response that was filed on September 4.

11 **THE COURT:** Tom, can you move the thing closer to you
12 because I'm even having a hard time hearing you here.

13 **MR. DURKIN:** Sure.

14 I said I'm -- as you may know, or as you do know, I'm not
15 usually one who is at a loss for words, but I'm almost at a
16 loss for words here for the just sheer distance between the
17 parties on this, which I never, ever anticipated; and I'll
18 simply refer to the first paragraph of our pleading.

19 The government seems, to me, to be acting as if there's no
20 mitigation whatsoever, or, at least, as we said, as they seem
21 to put it, "nothing they can confirm." And I, frankly, just
22 have a hard time with that. I don't understand it.

23 And let me read this. And this is on page 9. "Domestic
24 violence is a pattern of abusive behavior in a relationship
25 that is used by one partner to maintain power and control over

1 another current or former intimate partner. Domestic violence
2 can be physical, sexual, emotional, economic, or psychological
3 actions or threats of actions that influence another person.
4 This includes any behavior that intimidates, manipulates,
5 humiliates, isolates, frightens, terrorizes, coerces,
6 threatens, hurts, injures, or wounds someone."

7 And that's not Durkin on life. That's the Department of
8 Justice description of the Office on Violence Against Women.
9 That's the Department of Justice. This Court, which I'm proud
10 to be a member of, had a seminar, not many weeks ago, on just
11 this issue. The Court did. I wasn't there, but I wonder if
12 anyone from the U.S. Attorney's Office was.

13 It's, like, where are these people? Are they on another
14 planet? Now, they can argue all they want about terrorism and
15 the war on terror and how this is awful, but how they can claim
16 that this woman is not the victim of violence against women or
17 domestic abuse is beyond me.

18 And I don't really think they do. I think they believe
19 it. I just don't think they can say it. That's what I think,
20 and Mr. Zanzi can say what he wants. But I can tell you this,
21 I wouldn't have negotiated this case if I thought they were
22 going to recommend 10 years, trust me. I didn't negotiate to
23 get from 20 to 10 on this case because I would be arguing the
24 same thing if the ceiling were 20.

25 This is a woman who doesn't deserve a lengthy sentence.

1 She deserves a sentence, alright, but it doesn't have to be
2 lengthy; and, in fact, a lengthy sentence is counterproductive,
3 mean-spirited, and just wrong.

4 I look back at my bond motion that we filed in December of
5 2018 that had the report of Dr. Xenakis, and it was attached to
6 that. It is also attached to that addendum. It is probably --
7 with the way everything gets printed so often these days, you
8 get multiple versions of it.

9 But this was Dr. Xenakis in December of 2018 talking about
10 how her early life and the domestic violence and the torture,
11 cruelty, and harsh treatment as a prisoner and POW are the
12 sources of debilitating symptoms and impairments that have
13 erupted as post-traumatic stress disorder and major depressive
14 disorder.

15 Now, I hear the -- and he confirms that in his more
16 detailed report dated January 17, 2020. And that's where --
17 part of it I read to the witness today. Not trying to be cute
18 but trying to almost shame the government because, it's like,
19 do they dispute that?

20 "Ms. Elhassani endured tribulations in her childhood and
21 adolescence that currently aggravate her conditions and
22 problems. Family members report that she was the victim of
23 childhood abuse and neglect. The records do not indicate that
24 she received appropriate evaluation or treatment for her
25 symptoms and problems."

1 "Ms. Elhassani did not complete high school or vocational
2 training. Starting with high school, she engaged in sequential
3 relationships, marriages, and living arrangements that were
4 destabilizing and attributable to the consequences of abuse and
5 neglect. Her marriages and relations as a young adult were
6 unstable and troubled, including the suicide of the man that
7 impregnated her." That's what I was asking this guy about
8 today.

9 "Her marriage to a man Moussa Elhassani that controlled,
10 abused, and manipulated her is consistent with abuse and
11 neglect during her developmental years." And, again, he goes
12 on to read -- to describe the two diagnoses from the DSM-5
13 309.81, post-traumatic stress disorder; 292.63, major
14 depressive disorder. And he talks about how much help she
15 needs, not a penitentiary sentence.

16 And this is a man -- and I'm almost disappointed that we
17 didn't call him because he's an incredibly good witness. The
18 government attacks him because he's always arguing a defense
19 position. This is a retired brigadier general from the U.S.
20 Army, and he says in his report what his role is and how
21 concerned he is about national security matters. And he is
22 impressive, and if you want to talk to him, you can. He's
23 available right now.

24 But I'm telling you -- this is the same guy in the *Daoud*
25 case, which I think you are familiar with because of the

1 Seventh Circuit and so forth. This is the same witness that
2 Judge Sharon Johnson Coleman found more credible in the *Daoud*
3 defense -- I mean, in the *Daoud* competency hearing over the
4 government's doctor from Springfield, Missouri. Found him more
5 credible than a government doctor and made her rulings based on
6 that.

7 This is a good guy, and he's not a hack. And they're not
8 challenging this, apparently, other than the source of it.
9 Well, let me read some of the things they missed about some of
10 the sources of that information, and you have it in our witness
11 statements from the investigator, Exhibit B of Document 24-1,
12 our initial pleading.

13 This is from Andrew J. Moring. I mean, I guess maybe they
14 think we made these up too.

15 "AJ stated he started noticing Samantha losing weight."
16 This is all after she gets hooked up -- she's known AJ --

17 **THE COURT:** Can I interrupt just for a second just so
18 I have some context because I made a note about Mr. Moring.
19 Where does he fit into the story? Who -- how did he know her,
20 and can you give me a little background on that?

21 **MR. DURKIN:** He said that he and Samantha -- he
22 states it here.

23 "He and Samantha grew up in Arkansas. AJ said he knew
24 Samantha from around 1999, which is when he was nine years old,
25 and Samantha was 14 or 15 when they met. He stated he was

1 working in the rice fields in Arkansas when he got the
2 opportunity to move to Elkhart and work at the VIA address."
3 He worked at the joint that the Elhassani family owned.

4 "AJ, at the time, thought Moussa was a nice guy. AJ said
5 Moussa and Samantha invited him to stay with them." That's how
6 he knew them. But he said "AJ started noticing Samantha losing
7 weight and having circles under her eyes."

8 Now, this isn't Samantha telling him things. This is his
9 observation of Samantha as he observed her living with Moussa.
10 This is somebody who has known her for a long time.

11 "...losing weight and having circles under her eyes. This
12 was when AJ learned from Samantha that Moussa was telling
13 Samantha that she was fat and had to lose weight."

14 That's classic controlling men's behavior towards women.

15 "Samantha also informed AJ that Moussa was beating her.
16 AJ said Moussa told Samantha to quit smoking cigarettes and one
17 day Moussa found a packet in her car. Moussa came into the
18 house and smashed each cigarette one at a time on top of
19 Samantha's head."

20 "AJ has observed Moussa hit and shove Samantha."

21 So that's not her reporting it. That's the direct
22 observations of a witness who was present to watch that.

23 "AJ said Moussa was a bad person. AJ said Samantha was a
24 good girl just caught up with lies and couldn't get away from
25 Moussa. AJ said after work one evening he came home and walked

1 in the door and Moussa was standing there pointing a pellet
2 rifle right at his face. AJ said, 'what are you doing?'
3 Moussa said, 'ha-ha, just kidding.'"

4 "AJ said Moussa used to meet with the local drug dealer.
5 AJ said Moussa started using cocaine a lot. AJ said they had
6 to call police on Moussa because he barricaded himself in the
7 warehouse. Moussa was high on drugs and he thought people were
8 out to get him. AJ said it was Samantha, M[REDACTED], and him
9 knocking at the door trying to get out."

10 And this is related to this whole going to use the kid as
11 a camouflage or whatever they are saying.

12 "AJ said Samantha told him she didn't want to have sex
13 with Moussa but he would not take no for an answer and pretty
14 much would rape her. AJ told Samantha to quit taking all the
15 abuse and leave Moussa. Samantha told him it was okay. AJ
16 said Samantha decided to tell Moussa she was leaving him.
17 Samantha told AJ that Moussa grabbed a pair of scissors, held
18 her down in front of M[REDACTED], her five-year-old son, and put
19 the scissors to her throat."

20 That's AJ.

21 How about Angela Benke. "Consistent with AJ, Angela
22 stated that after a while, that is, after a while living with
23 Moussa, she noticed Samantha was not the same and asked
24 Samantha if she was okay. Samantha said no."

25 Now, there's another live witness who noticed a change in

1 a woman living with a crazy man.

2 "Samantha said no. Samantha told Angela that Moussa hits
3 her and she doesn't like the way Moussa treated her son.
4 Samantha said he is abusive to him. Also, Samantha told Angela
5 that she was scared of Moussa."

6 "Angela stated she told Samantha, 'If you are afraid, why
7 don't you move out?' She said, 'I'm in love with him,'" which
8 is also a classic, you know, what do they call that, Stockholm
9 syndrome-type issue where even if they're treating you badly
10 you begin to love them.

11 "Angela stated" -- not Samantha -- "she felt Moussa was
12 looking for someone he could control. Angela stated Samantha
13 came in one day and she was crying. And Angela asked if it was
14 Moussa and Samantha said yes. Samantha told Angela that Moussa
15 told her if she was ever to leave he would kill her. Samantha
16 told Angela, 'I'm scared to death.'"

17 "Angela said she told Samantha there are people that can
18 help her. And Samantha said, 'He will kill us.'"

19 That's a classic sign as well. Even when help is
20 available, they can't take it because they're too afraid to get
21 it.

22 "Angela told Samantha" -- "Angela stated Samantha told her
23 Moussa forced her to have sex with him and that it was brutal
24 and not passionate."

25 Now, you know --

1 And this is kind of telling. "Angela said when Samantha
2 was not with Moussa she was a different person, that she was
3 very outgoing, friendly, and easy to be around. When Moussa
4 was around Samantha, she would say nothing."

5 And then, finally, in that pleading, there's a third
6 witness, Andrea Lightner, who I believe is in the overflow room
7 or the room that people can't come in. I don't know what --
8 there's another room here.

9 **THE COURT:** The jury assembly room.

10 **MR. DURKIN:** Which I didn't know about.

11 And this is someone that worked there since 2011. "Andrea
12 said during sometime when Samantha was working with Moussa at
13 one of the other warehouses Moussa got mad at her and took her
14 car keys and made Samantha and M [REDACTED], her son, walk home,
15 which was several miles away."

16 This is the part I meant before about which will explain
17 why she took him to Hong Kong. "It was snowing outside and
18 cold, Andrea said. Samantha told her that when she and M [REDACTED]
19 got home Moussa was already home and had changed the locks on
20 the doors."

21 Think maybe you might want to keep your son away from
22 somebody that would do that to a kid, much less his wife?

23 "Andrea said she never saw the abuse." But kind of like
24 that old saw about maybe you didn't see it snowing that night
25 but when you wake up -- when there was no snow on the sidewalk

1 and when you get up in the morning and there's a foot of snow
2 you can kind of safely presume that it snowed.

3 "She never saw the abuse, but several times Samantha would
4 come in with lots of makeup on to hide bruises."

5 That's a live witness. That's not Samantha reporting
6 things.

7 "Andrea said you could tell when Moussa came around
8 Samantha. She would kind of cower."

9 That's another observation by a live witness who is
10 describing things. This isn't Samantha reporting to try to
11 sneak her way out of some jail time.

12 And then there's the report from her sister that was filed
13 with our response on Document 32, which, again, is another live
14 witness.

15 She talked about a few times when she told Samantha to
16 come and stay with her for a while until things calmed down
17 over what was going on.

18 She said that never happened because either Samantha's car
19 keys were missing, tires were slashed, and/or the car battery
20 was taken out. That's what he used to do. When she would
21 begin to act the least bit independent, he slashed the tires
22 once. Another time he took the car battery out so she couldn't
23 go anywhere.

24 She stated Moussa was always holding onto the young
25 daughter and would tell Samantha she could take M.S. but the

1 baby is staying with him because that was his daughter. That's
2 classic too.

3 Zahra said Moussa would not even let Samantha go stay with
4 his own sister and basically wanted to keep Samantha at home
5 with him by using the daughter as a hostage.

6 She also says, "Samantha wanted to keep the kids together
7 and may have went to Syria because of that. Zahra said
8 Samantha was the type of person where she would take care of
9 her issues herself and no matter how tough Moussa was on her
10 she would go along with it."

11 Again, classic victim. Always thinking that it is going
12 to change; it is going to be okay; it is just going to be okay.

13 And, yet, this is the same government that tells you that
14 she has nobody to blame but herself. Can you imagine why
15 prosecutors would take that position, how -- with that thing I
16 read from the Department of Justice, how they could take a
17 position that a woman in her circumstances has nobody to blame
18 but herself? That's just okay?

19 Have we lost our mind in this country because it's a war
20 on terror, because Washington says we got to do something,
21 because we got to get maximum time for all terrorism
22 convictions for fear judges might start acting sane. That's
23 what's going on. That's what's going on here. That's what's
24 wrong with the "one-size-fits-all" terrorism enhancement.
25 That's exactly what's wrong.

1 Nobody to blame but herself. And they say we didn't --
2 that you only have to rely on her words, as if she's making it
3 up to save her neck in here. Take a look -- and I'm sure you
4 have. I hope you have because I know you well enough and I
5 know you would have.

6 Did you listen to those calls with Bauer, which they --
7 again, they want to play both the red and the black square, to
8 use Mr. Herman's analogy here. When it's okay, when those
9 things help them, you should use it against her. But when they
10 hurt them, no, you can't take that into account.

11 You know, look at those Bauer calls, which they say,
12 but -- and I love this -- "but" -- in italics -- "whatever
13 happened here" -- in case you didn't get that, so, listen here,
14 Judge Simon -- "but whatever happened here, Elhassani's long
15 history of self-serving lies and manipulation make it
16 impossible to completely trust her account without independent
17 verification." Well, I submit to you we've supplied plenty of
18 independent verification.

19 But as we said there, this flippant and mean-spirited
20 dismissal is wrong on so many levels, and it's difficult to
21 imagine that a response is necessary since there is ample
22 evidence of the horror she endured in Syria. And then we go
23 back to just recite a few of those. That's on page 21 of our
24 pleading.

25 She described what happened to her in the ISIS prison.

1 Are they suggesting that she made this up? This is what she
2 told Bauer, and this is classic. This is consistent with every
3 report of everybody that's been in an ISIS prison, and our
4 government knows full well this is consistent with what
5 happened. They know that because they know what happened in
6 those camps, and for them to say, "but whatever happened to
7 her."

8 And here is what she says happened to her, and you have
9 nothing to show that it wasn't true. Because nobody would want
10 to be talking about this if it didn't happen.

11 "Her injuries included severe burns and severe vaginal
12 bleeding. She was covered in bruises and had taser burns on
13 her body. She described how she was kept for days in a tiny,
14 cramped cell no bigger than a bathroom stall."

15 Totally consistent with all the media reports about what
16 happened there.

17 "The ceiling was a cage from which there hung handcuffs."

18 It's like a scene out of the CIA black sites, I might add.

19 "She had to use the cell for a bathroom and suffered
20 severe dehydration from lack of food and water. She recalled
21 one particular torture. An Egyptian would take her handcuffs
22 down her back -- down behind her back and pushed her forward
23 like a rag doll. The Egyptian would uncuff her and then tie
24 her hands from a pipe so she would be standing on her tip
25 toes."

1 That's right out of the playbook. You know what I heard
2 in the military commissions in Guantanamo? Just that same
3 thing, that that's what we did in the black sites.

4 But they know this happened in ISIS. They know this
5 happened over there. And they know this is totally consistent,
6 and why would she make that up? Why would you dare make that
7 up to have to tell people about that?

8 "No matter what she said, the interrogation wouldn't stop.
9 She was told that if she did not confess to be her son -- to
10 being a spy, then her son would be brought in and she would
11 have to watch him tortured."

12 At the time she was eight months pregnant.

13 "When she was shocked, she would ask if her baby moved.
14 She described many instances when she thought she would be
15 executed, including after other women and men in the prison
16 were killed."

17 Yet that's not mitigation? That's not a 3553(a) factor
18 that you could rely on to say, wow, for as bad as you were,
19 Samantha, nobody deserved this.

20 And certainly our country shouldn't say to her, who is an
21 American citizen, who is not an ISIS member, not even a Muslim
22 for that matter, she's a Christian, that, oh, well, that's your
23 problem. Too bad. Too bad. We don't know whether it
24 happened. We just can't be sure it happened. But they can
25 speculate about what she was doing with the kid.

1 I don't mean to get so passionate, but I am incredibly
2 disappointed in the position that the U.S. Attorney's Office
3 has taken, and I have a lot of respect for this U.S. Attorney's
4 Office, so -- and Mr. Kirsch and I are quite good friends, and
5 I get along very well with Abizer.

6 I don't think this is coming from the U.S. Attorney in
7 Hammond. I think this is coming from Washington. That's what
8 I think. Maybe I'm wrong. Maybe they're not as nice of people
9 as I think they are.

10 But I just -- I cannot imagine that that would be a
11 position that this office, if it was independent, would take.
12 I would hope not.

13 But thank God that's why we still have a judiciary. Now,
14 I understand you can say, well, you know, these guidelines are
15 the guidelines. And I won't get into what we discussed today
16 because I'm not going to advocate anything, but you know that
17 you have complete, sound discretion, and I beg you to exercise
18 it here because it's appropriate.

19 A sentence above five years, in my opinion, would be
20 excessive. It doesn't work any other way. The way my head
21 works, at least the way it used to work in these courts, it
22 used to work when we weren't in a war on terror, which is we
23 did the right thing.

24 And if you look at the time she has in custody already,
25 and I would submit -- I mean, she's been in custody 27-plus

1 months, okay. So if you give good time credit on that, which I
2 think she's entitled to, that would be a 32-month sentence,
3 which would walk her out the door today. I'm not asking you to
4 walk her out the door today, but I am asking you to give her
5 some credit for the time she was in the Kurdish camp. I'm
6 going to tell you why.

7 When she was first contacted by the FBI, it was November
8 of 2017. They returned the Indictment in March of 2018. I
9 assume that there was a warrant issued upon the return of that
10 sealed Indictment.

11 So the FBI had the ability, unless they can convince you
12 to the contrary, to get her that day and take her right out of
13 that camp. They didn't for whatever reason, and I'm assuming
14 there are state department reasons or whatever logistical
15 reasons there were, or what have you. But had she been in
16 Indiana, they would have picked her up, and she would have
17 gotten that credit. So I'm saying from November '17 -- I'm
18 sorry. From November of 2017 to November 9, that would be the
19 equivalent of 36 months. So I would ask you to give her that.

20 So that's, roughly, eight months that I would like you or
21 ask you to take into your calculation as to where you get to,
22 which I think is fair.

23 The other real issue, I think -- and it kind of goes back
24 to my bond motion, and it coincides with the issue of
25 supervised release -- she really needs treatment. She has

1 gotten better at Porter County only with the use of medication,
2 which has had some real hard effects on her. I was very
3 worried about her --

4 Samantha, when was it? When did you gain all that weight?

5 -- like January of last year. I saw her before COVID. I
6 saw her very regularly because we live -- we have a house in
7 Michiana and I would go back to Chicago and I would
8 frequently -- it wasn't that far out of my way to go down 49,
9 so I saw her, maybe, like, every week or two weeks back in that
10 day.

11 There was a time -- maybe it was Christmas, I guess. She
12 says it was January. Maybe I didn't go there much at
13 Christmas, so maybe between Thanksgiving and Christmas I don't
14 know if I saw her much -- I was shocked when I saw her. It was
15 like somebody had put a pin in her and pushed the air pump.
16 She was huge.

17 And I said, "What happened?" And it was the medication.
18 And finally we got Xenakis's opinion, and they were kind enough
19 to talk to Xenakis at the jail -- and that jail is very good,
20 by the way, in fairness to them -- and they adjusted the
21 medication. And then she started working out more and -- but
22 you could kind of tell that she was mentally better but she was
23 physically awful.

24 Now I think she's kind of in between. And I think it's --
25 I don't see what a lengthy penitentiary sentence would serve

1 under the circumstances because, one, if it's -- the usual saw
2 is for general deterrence. Well, I don't know that there's
3 going to be a lot of women in the world that will be watching
4 this and, you know, going, oh, my God, you know, this woman got
5 a slap on the wrist in Indiana by getting four or five years.
6 That's terrible. I don't think that's an issue, and I think
7 you have enough experience to know that can't possibly be an
8 issue.

9 I think the most aggravating factor here is the one the
10 government -- the card the government played today, which I
11 get, and that look what happened to her son. Well, it's true.
12 And she has something to say about that, which you'll hear.

13 But I can tell you how racked with guilt she is over that,
14 but I can also tell you that -- and I'm also happy to see that
15 the boy is doing as well as he's doing. That was the report we
16 got -- that's Samantha's father in the back there. He reports
17 that the kids are good as well. I don't know that he has seen
18 them, but he and this J [REDACTED] get along very well.

19 The other three kids are getting along very well, and it's
20 the hope of the family, as we told you, that they're going to
21 adopt them. And I think DCS is on board with that, from
22 everything that I'm aware of.

23 But I can tell you it has been -- if you want to talk
24 about punishment and self-inflicted punishment, being separated
25 from her children has been agonizing for her. And you can say,

1 well, she should have thought more about her children. Yes and
2 no, you know.

3 Forget, you know, whether her description of the white van
4 and whether she was forced to go along or make a choice in a
5 quick moment. The fact is she did go along to try to protect
6 the children. I happen to believe her version of the van, but
7 I don't think that's critical for your purposes.

8 I think that -- I think there's a lot of room for grayness
9 over what was really going on and what she knew. The sense I
10 got was that it was -- the real radical was Abdelhadi and not
11 Moussa, and I think there's a lot of support in the facts for
12 the fact that it was Moussa who was more on the fence.

13 I mean, there's no dispute, at least from what I
14 understand, over whether Moussa was, at least, when she first
15 met him, more western than anything else. And in that sense,
16 you know, I mean, he was smoking; he was drinking; he was
17 visiting prostitutes; he was a typical big western man, pig, to
18 put it mildly. And then he turned goofy. And I know what
19 that's all about because I've represented people that that
20 happens.

21 I've accused them more rhetorically than anything else of
22 using a proxy prosecution here, but I think from a sentencing
23 standpoint, we need to be careful about who the real terrorists
24 were here.

25 You can say, well, she shouldn't have gone and brought

1 that money there. Yep, she shouldn't have melted down the
2 gold. Yep, she should have got away from him. Yep, would
3 have, could have, should have is a lot of things. But the real
4 issue is what can we do in light of everything here and what do
5 we do for someone who has suffered as much as she had?

6 And I would submit to you that a lot of incarceration
7 helps no one. M[REDACTED], according to J[REDACTED], may or may not ever
8 make up with his mother. I hope that that changes. I would
9 hope that everybody in this room would hope that changes, and
10 the way that will happen is if M[REDACTED] continues to get
11 better -- I was kind of disappointed to hear that he stopped
12 the therapy. I am surprised by that because I didn't know
13 that. I thought he was still in therapy because that's what
14 was helping him so much. That's what I hear has helped.

15 DCS has been very good in this, by the way, which they get
16 a bad wrap a lot of times. But they've, at least from
17 everything I've gathered, have really stepped up here and
18 provided help for these kids and got them to the grandparents.

19 But everybody has to get better here, including her. And
20 if there's any hope for that, then I think there has to be some
21 type of sentence that doesn't warehouse her and gets her the
22 services she needs, which she won't get in the Bureau of
23 Prisons, and you know that. She's just not going to get the
24 kind of help she can get in the Bureau of Prisons on the
25 outside, and that's what Xenakis's opinion is, and that's what

1 he's reported to you.

2 I think that -- and this is particularly true -- it's my
3 understanding that the government is supposedly coming up with
4 a CVE program in this country, finally. I would like to see it
5 on the front end rather than on the back end. But based on the
6 *Daoud* case, it's my understanding, talking to somebody who was
7 on the *Daoud* probation side who is on a national task force,
8 they are putting together a program for this countering violent
9 extremism. Now, I don't think she needs that, in particular.
10 But my point is, in fashioning supervised release conditions, I
11 think you can alleviate any concerns about danger or -- danger,
12 I guess, more than anything.

13 I think that -- I think that this is a time, and I think
14 the President-Elect kind of said it best. This is a time we
15 need some healing, and this is not a time where we need to be
16 mean-spirited and harsh. The war on terror is getting pretty
17 old. It is in its 19th year.

18 It seems to me that this is a case where you can fashion a
19 sentence -- I'm saying in the four to five range -- that would
20 meet every purpose of 3553(a), would not be more harsh than
21 necessary, and take into account all those factors. That's
22 what I'm asking for, and I think I'm right.

23 I think that there are just sometimes cases where the
24 politics and the positions get too hard. Maybe we should have
25 had a trial. I don't know. She didn't want to go through the

1 trial. I did. I think we would have had a better sentencing
2 hearing had we had a trial, but I think it was the right
3 decision for her; otherwise, I wouldn't have let her do it.
4 I'm asking you for some mercy.

5 **THE COURT:** Thank you, Mr. Durkin.

6 All right. Ms. Elhassani, is there anything that you wish
7 to say on your own behalf before I sentence you, ma'am?

8 Again, would you mind removing your mask while you're
9 talking to me.

10 **THE DEFENDANT:** Can you hear me if I stand?

11 **THE COURT:** Sure.

12 **THE DEFENDANT:** I just can't see you very good.

13 **THE COURT:** Okay. Very well.

14 **THE DEFENDANT:** I know you said that I'm not allowed
15 to go off script.

16 **MR. DURKIN:** No.

17 **THE DEFENDANT:** I just want you to know that I really
18 hate that I have to read this, but it's a really emotional
19 time, and it's probably better.

20 I am standing here before you today because I do want to
21 apologize for what's happened and for what I've done and for
22 the times that I've been able to make it different and didn't.

23 But before that, I want to publicly apologize to my son's
24 father, J.S., the one that testified here today. I don't know
25 if he can hear me or not, but I really -- it has torn me up

1 completely that I let another man come between him and his son
2 and come between us because we were good friends for a long
3 time, and we did make it work. He trusted me to take care of
4 our son, and I failed at that. And I hope one day that he'll
5 let me ask my son for forgiveness, even if he doesn't forgive
6 me.

7 And then there's my parents. This is the third generation
8 that they've raised. My children are the third generation that
9 they've raised. And my dad, he's always wanted a quiet
10 retirement, but he's known since 15 years ago he wouldn't be
11 able to do that when he adopted my sister's daughter, and he's
12 always been there to take care of us.

13 And my mom, too, she's always been there to take care of
14 us and pick up the pieces, and I want for more than anything to
15 be able to go to my mom. I wish she could be here today, but
16 she's with my kids because they can't -- they can't come to
17 things like this, and they can't be around people because of
18 the coronavirus.

19 I just want to thank them and tell them I'm so sorry for
20 everything that's happened and everything that I've put them
21 through.

22 And since I was a kid, my dad told me, no matter what,
23 even if I was wrong, he would stand here next to me, and that's
24 where he's at today.

25 It's been difficult, but I have learned that I need to ask

1 for help. Mr. Tom has helped me through that. Mr. Josh has
2 helped me through that. When I tell them everything is okay,
3 they tell me, "It's okay if everything is not okay. You just
4 got to let us know."

5 And I'm thinking of my future now and what I want to pass
6 down to my kids. And I want to continue my education so even
7 if I can't be with them I can, at least, pass something down to
8 them to the point when I can be with them. And I want to be
9 the mother and the daughter that I'm supposed to be to both my
10 parents and to my kids. I want to be there for them the way
11 that they have been there for me.

12 And I realize it's going to take a lot of time and a lot
13 of help on my part. There's a lot of therapy that I haven't
14 received, and I am definitely going to work very hard on that
15 and to try to change things. I'm 35 years old, and I can't
16 keep doing things like this.

17 And I want to apologize that we're here today and to our
18 government and to Mr. Marty, who I had the pleasure of meeting
19 many times, and that I didn't trust him enough to tell him what
20 was going on and that I just tried to handle it on my own. And
21 I wish I could do it all different. I certainly would. I'm
22 sure you've heard that so many times, but I promise you, nobody
23 can mean it the way that I do today.

24 And I would like to ask for your forgiveness and mercy the
25 way that Mr. Tom has asked for mercy.

1 **THE COURT:** Okay. Thank you, ma'am.

2 Mr. Zanzi, I'll hear from you now and the government's
3 position.

4 **MR. ZANZI:** Well, Your Honor, it's no secret that the
5 parties see this case very differently, and you have been given
6 a lot of material, including lengthy sentencing memoranda and
7 exhibits. I know you have reviewed them all.

8 Before you make your decision, I want to remind you what
9 defendant has pled to and what she did that brought her here
10 before you today.

11 About a year ago, November of 2019, defendant admitted to
12 you in this courtroom that she knowingly and willingly helped
13 her husband travel to Syria to join ISIS, and please consider
14 that, Your Honor, and put it into context because a lot has
15 changed in the world since she made those decisions, certainly
16 in this year.

17 Defendant's husband hold her he wanted to join ISIS in
18 November 2014, and by that point in time, you have to be living
19 under a rock not to know what ISIS was and that they were a
20 threat to the United States.

21 If you recall, anybody who had a TV or a smartphone would
22 have seen those very shocking images -- they are seared in most
23 American's memory -- out in the sands of the Middle East of
24 Jihadi John and other ISIS members beheading Westerners and
25 American journalists and just thinking, wow, this is the new

1 existential threat and Islamic terrorism and a threat to
2 America and a threat to the world.

3 And defendant admitted herself that she -- both to the FBI
4 and in her journal, or whatever this document is that she
5 wrote, that she knew about these. She saw them. Anybody would
6 have seen them.

7 And her husband told her that he wanted to fight for this
8 group, to fight for them. And this is a terrorist organization
9 that was creating havoc in war-torn Syria destabilizing the
10 region, imposing a threat to U.S. national security interests.
11 And Moussa said that he wanted to leave his stable, maybe
12 boring job in Elkhart, Indiana, and fight for them.

13 So what did defendant decide to do? She knowingly and
14 willingly helped him. That's the *mens rea* in this case,
15 knowingly and willingly she helped him.

16 Moussa and Abdelhadi were two Moroccan citizens who had
17 overstayed their visas in the United States. They couldn't
18 just hop on a plane to Turkey with suitcases filled with gold
19 and cash. They couldn't do it. It was way too risky certainly
20 by 2015.

21 They needed a staging location that would not draw
22 suspicion, and they needed defendant to set it up. And she
23 admitted in her plea that she agreed to do this knowingly and
24 willingly. I say that because there's been a lot of talk about
25 whether or not she had true agency here.

1 She transported tens of thousands of dollars in gold to
2 Hong Kong knowing that these funds would be used to help her
3 husband fight for ISIS. Defendant claims that all she did was
4 move some money around, at least in the sentencing memoranda.
5 And the question is, what real crime occurred here, and that
6 she's otherwise innocent in this scheme. It was really all
7 about some proxy against Moussa and Abdelhadi.

8 Well, first of all, what defendant did was -- admitted to
9 was pretty serious. Certainly, you saw that case in the Ninth
10 Circuit where someone opened a social media account. She did a
11 lot more than that. You consider what this money was going to
12 be used for and what impact it was going to have to fight
13 people and kill people.

14 Second, moving money around is not all she did. That's
15 the charge here. You have to look at the relevant conduct as
16 well. She made Moussa's dream of becoming a terrorist fighter
17 possible. She knew that this was a terrorist organization.
18 They were engaged in terrorists activity. That's part of the
19 plea. And she joined him in this evil journey. She lied for
20 him. She uprooted her family and took her seven-year-old boy
21 and two-year-old girl to a war zone for him.

22 You heard from J.S. and the impact that this had on his
23 child. We're all relieved that he's making progress, but it is
24 not going to be easy. The fact that he's not going to therapy
25 anymore, the images that he has in his head, the fact that he

1 can't even hear fireworks, this kid has got a long way to go.

2 As you know, defendant has spent a lot of time talking to
3 media and journalists and, you know, writing this document
4 which is -- what I believe is to be the story she wants people
5 to believe. There are reasons she's writing -- talking to
6 journalists is because, you know, they're going to do something
7 or produce something about this. She wants people to believe
8 story.

9 And even in the arguments you heard today and the video
10 you saw with the mother and everything like that, what she
11 wants you to believe is that she didn't know she was going to
12 Syria -- at least that's what I take it as -- she didn't know
13 she was going to Syria. She thought she was going to Morocco
14 for a knee surgery or to buy a vacation home or that they were
15 coming back soon. This is the story that she's been selling
16 for a really long time. And, frankly, Your Honor, that's
17 absurd.

18 She's admitted to smuggling her entire life savings
19 halfway across the world in a direction opposite from Morocco
20 so that her husband could join ISIS. She did that for that
21 purpose. And she and her husband spent thousands of dollars on
22 last-minute flights to Hong Kong, one of the most expensive
23 cities in the world. They melted down gold to look like
24 jewelry.

25 She wants people to believe that she thought she was going

1 to Morocco to get cheap knee surgery or to buy a cheap vacation
2 home on the beach. How was she going to pay for that, in
3 melted down gold? It's just not plausible, Your Honor. It's
4 not a plausible, logical conclusion. There's just no evidence
5 that they were planning to travel to Morocco for knee surgery
6 or a vacation home or any other reason because they are not the
7 truth, Your Honor.

8 It's not -- when we say, Your Honor, about
9 accountability -- and, you know, this case was a carefully
10 negotiated plea agreement, and she pled to the bare minimum
11 that allowed her to still make these arguments.

12 And that's when we say she's not taking full
13 accountability. We're not asking for you to not give her
14 acceptance of responsibility credit, but we are asking you to
15 consider that as 3553(a), is she really taking full
16 accountability and responsibility?

17 You know, talking about picking and choosing the videos
18 with Josh Baker, soon after her plea, this is the first thing
19 she did. The reason why we put that video in is because what
20 she said was contradictory to her plea. She said at the time
21 she didn't really know -- that she went to Hong Kong, she
22 didn't really know if they were going to Syria. That's not
23 consistent with her plea. She didn't really know if it was for
24 ISIS. She thought her husband was going to Morocco. If they
25 are going to Morocco, then it is not for ISIS.

1 You know, the only conclusion -- the only logical
2 conclusion -- the reason why they are doing all of these
3 countersurveillance techniques and the way that they handled
4 things and the lies that they told and all the work that was
5 done, because this wasn't easy, was because she knew that when
6 she committed these crimes that she and her children were
7 ultimately going to Syria to a war zone so that Moussa could
8 become a fighter for a terrorist organization.

9 And if you, Your Honor, agree with that and you agree with
10 that conclusion, then the things that defendant did are
11 horrifying. And she lied to J.S., M.S.'s father in order to
12 get his permission for a passport so she could take him over
13 there to a war zone and subject him to all of those things.
14 She deprived J.S. of an opportunity to stop her and protect his
15 son.

16 She pulled him out of school just one month before they
17 left for good and she took him to a shooting range and bragged
18 about him as a sniper. He said he had no problem with him
19 shooting or anything like that, and nobody here is saying that
20 that's in and of itself -- by itself there's anything wrong
21 with that. To each their own. But knowing they were going to
22 live amongst ISIS where children were being recruited to fight,
23 that makes the whole incident really alarming and the timing
24 and on the context of it. What was going on in her head at
25 that time?

1 And during their final trip to Hong Kong, she helped
2 Moussa procure tactical gear, rifle scopes and image-stabilized
3 binoculars. She wants to explain that to suggest that, well,
4 he was just buying this stuff to try to sell to hunters in
5 Morocco. This is what she's trying to tell -- this is what
6 she's trying to tell the world and explain this to people.
7 That's just -- it's implausible; it's untrue; it's
8 preposterous.

9 When you know your husband wants to go to ISIS, it's --
10 you know, whether you believe that she actually purchased these
11 items or not, it's undisputed she helped obtain this gear; and
12 she did that knowing what her husband was going to do with it.

13 From the beginning of this case, defendant has blamed
14 everything on her husband, and we're not here to defend
15 Moussa Elhassani. Moussa Elhassani is a terrible person. We
16 agree with that. You can take judicial notice of that.

17 But it's also very telling, this diary -- and we included
18 the whole thing for a reason because she -- it is -- she bears
19 out all of the terrible things that happened to her in Syria
20 and all the terrible abuse that she endured, which was
21 corroborated in Syria. But it's not how she paints the story
22 of why she went there. She doesn't say that she went to Syria
23 because of him, because he forced her or anything like that.
24 She says he tricked her. They were planning to go to Morocco.
25 It's the same story she's selling everyone else.

1 He's dead by this point. By the time that she writes
2 this, he is deceased. She's no longer living in the Caliphate.
3 She's unencumbered by him, and she's not afraid to talk about
4 the very terrible things that happened to her, which we're not
5 dismissing or disputing the terrible things that happened to
6 her.

7 But here in this document, she doesn't say she went there
8 because of his psychological abuse or because of his -- she
9 doesn't say that he's a great guy, but she didn't say because
10 of his psychological abuse or physical abuse. It's because --
11 they were going to Morocco, and he tricked her at the end.

12 She described him as a loving father and husband before
13 they went there and then something changed, and that's
14 consistent with what the government knows. When individuals go
15 into ISIS and they become -- they become indoctrinated and they
16 turn -- I mean, he was a bad guy to begin with, but they turn
17 into monsters. And certainly what happened here.

18 And defendant may have admitted to some of her criminal
19 actions enough to plead guilty to the charge at hand, but she
20 is not taking full responsibility for her actions. If you knew
21 your husband was going to Syria to fight for ISIS, or even if
22 you knew there was a remote chance of it, why would you get on
23 that plane for the final departure? Why would you take a
24 chance? Why would you take your kids with you?

25 If you knew there was even a remote chance that you and

1 your children could end up in a war zone halfway across the
2 world, why didn't you tell the FBI with whom you had a good,
3 friendly established relationship? Why not tell anybody?

4 The only logical conclusion from all the facts and
5 circumstances is that defendant went to Syria and brought her
6 kids there knowingly and willingly.

7 Now, you seen the videos of M.S. And I didn't play them
8 here today because I'm not -- I didn't want to do that for
9 shock value. They're shocking enough if you have even seen
10 them once, and they are haunting. What defendant's children
11 went through and suffered because of her decisions is
12 unconscionable and unimaginable and has affected a lot of
13 people who care about these children.

14 And she can point fingers all she wants, and we don't
15 dispute that bad things happened to her. A lot of defendants,
16 tragically, have tough upbringings, and we don't dispute that
17 or minimize that. But does it excuse these decisions and the
18 decisions that she made for her children who had no choice in
19 the matter?

20 She had plenty of opportunities, Your Honor. She had
21 plenty of -- she had choices, choices along the way. This
22 occurred over a period from November 2014 until they left for
23 good in March. How many chances did she have to stop this and
24 to protect her children?

25 We are not blind or unsympathetic to the arguments in

1 mitigation. It is one of the reasons we made the offer that we
2 did. But when evaluating defendant's arguments in mitigation,
3 we want to remind you that some things have been corroborated
4 and some things have not about her story and about what has
5 happened.

6 And, yes, we have trouble believing her account because
7 she has a long history of telling a story that will serve her
8 personal interests. It doesn't mean that we're victim shaming
9 or that we're all the nasty things that we have been accused
10 of. She has real credibility issues.

11 We also don't believe that it's untrue that some of these
12 terrible things happened to her, and you should consider that.

13 You know, when it comes to Dr. Xenakis, you know, we're
14 not disputing his conclusions -- let's just put his analysis in
15 perspective.

16 He met with her a couple of times. He's not a treating
17 physician. We do disagree with the very broad conclusion that
18 the BOP cannot treat her. And, you know, yes, there are cases
19 where he has been credited. There are cases when he's not been
20 credited very highly. I will give you one example, *U.S. v.*
21 *Abu Ghayth*, 945 F.Supp. 2d 511, Southern District of New York,
22 2013. This was Sulaiman Abu Ghayth. He was a reputed
23 son-in-law of Osama Bin Laden.

24 **MR. DURKIN:** I'm sorry. I thought we had an
25 agreement that they were not going to contest Xenakis. That's

1 why we didn't call him. Now, I have bit my tongue here over a
2 lot of things, but this is unfair.

3 **THE COURT:** Okay.

4 Proceed.

5 Overruled. Proceed.

6 **MR. ZANZI:** Okay. I just want -- the simple point I
7 want to make is the judge in that case made the following
8 quote, and this is at page 518 of the opinion.

9 "The Court affords minimal weight to Dr. Xenakis's
10 testimony. Dr. Xenakis never examined or met Abu Ghayth,
11 relying instead on hearsay concerning Abu Ghayth's time in
12 Iran, Abu Ghayth's affidavit, witness testimony, and the FBI
13 agent's transfer log in reaching his conclusions. He was,
14 obviously, partisan and expressed opinions with little basis
15 relying predominantly on second-hand accounts and theoretical
16 possibilities."

17 All I'm saying, Your Honor, is that, you know, he is
18 willing to make conclusions based upon what defendant provided
19 him, the information a defendant provided him. And it's up to
20 you to determine whether or not -- how much do you credit that?
21 How much do you believe and rely upon that?

22 We understand that there's some corroboration. We
23 understand what AJ Moring said. These are people who care
24 about the defendant and are biased towards her, and we're not
25 saying that they're not true. But we have a hard time with her

1 credibility.

2 Your Honor, this is a serious crime, and a lot of terrible
3 things have happened to a lot of people because of defendant
4 and her decision to support her husband and move her family to
5 Syria. She made it all possible. Her role in these plans was
6 a purposeful, extensive commitment over the course of several
7 months. And although ISIS may be a very different threat than
8 it was in the past, extremism in all forms continues to pose a
9 threat to American society and its national security. And
10 whatever her motivation is at the time and whatever her excuse
11 is or rationale is now, her crimes justify a significant
12 sentence not because the guidelines recommend it but because it
13 is just and fair.

14 Thank you, Your Honor.

15 **THE COURT:** Okay. Thank you, Mr. Zanzi.

16 All right.

17 **MR. DURKIN:** I could say things if you -- if that
18 was --

19 **THE COURT:** I listened to you for 45 minutes --

20 **MR. DURKIN:** Okay. That's fine. I'm just --

21 **THE COURT:** -- and Mr. Zanzi for maybe another half
22 an hour. I've heard enough.

23 **MR. DURKIN:** I'm only smiling because you kind of
24 looked at me. I thought maybe you wanted to hear from me.

25 **THE COURT:** Ms. Elhassani, I'm going to talk to you.

1 I like to talk to the defendant at sentencing because you are
2 the person who has the most interest here.

3 So there's a lot of things, just for your edification,
4 that I have to take into account when I sentence people. I do
5 my level best in every sentencing to do that.

6 And, you know, the first thing that I have to look at is
7 what do the United States Sentencing Guidelines recommend.
8 That's one factor. And I'll talk a little bit about those in a
9 couple of minutes.

10 But in this case, as you have heard me say, the sentencing
11 guidelines recommend a sentence of 10 years. And it only gets
12 to 10 years because, as I'm sure Mr. Durkin has explained to
13 you, there's a statutory cap here of 10 years. The guidelines
14 were actually well in excess of that, so it makes the guideline
15 range 10 years. So that's certainly something that I have to
16 take into account when I sentence people.

17 There's a whole host of other things as well, though, that
18 are just as important as the sentencing guidelines when I try
19 to arrive at what I hope is a reasonable sentence. I have to
20 look at the nature and circumstances of the crime. That's no
21 surprise. I have to look at what did you do that brings you
22 here today, your actual criminal conduct.

23 But I also have to look at your personal history and
24 characteristics, and that's a very broad concept I'll talk
25 quite a bit about in a minute.

1 But to kind of sum it up, the way I like to look at it is
2 I have to look at both what you did and who you are as a person
3 in trying to arrive at a fair sentence. And in doing that, I
4 have to take into account a number of things.

5 I have to try to impose a sentence that's going to reflect
6 the very serious nature of the offense. I have to try to
7 announce sentences that are going to promote respect for the
8 law, provide just punishment for the offense. I have to be
9 concerned with deterrence of criminal activity, and there's two
10 types of deterrence. One is specific deterrence, trying to get
11 you to stop committing crimes.

12 You know, you arrive in this court -- set aside this
13 criminal history category VI that these guidelines have, sort
14 of, launched you into, but you arrive here today with not so
15 much as a parking ticket in your background. So that's
16 certainly something that I have to take into account. No
17 arrests, no convictions, no juvenile adjudications, no driving
18 offenses, nothing. You come here, really, as a true first-time
19 offender. So I have to ask myself, when I announce a sentence,
20 what is the likelihood that you're going to reoffend? And
21 that's something I have to take into account when I sentence
22 you.

23 Then there's also the concept of general deterrence and
24 that's kind of a "pie in the sky idea" that what we do here
25 matters in a larger sense, that there's people out there who

1 would be deterred from committing crimes if they heard what was
2 going on in this courtroom, that would deter them. You know,
3 whether that's based in any kind of reality or not, it's
4 certainly something I have to take into account. There is some
5 sense that people want to comport themselves within the
6 confines of the law and that if they hear that people receive,
7 you know, extended sentences, perhaps there's a hope that it
8 would make people think twice about committing crimes. In any
9 event, that's another factor I have to take into account.

10 I have to try to avoid unwarranted disparity among
11 similarly situated defendants, so that's another factor. And,
12 ultimately, the goal is to arrive at a sentence -- what I'm
13 mandated to do is try to arrive at a sentence that is
14 sufficient but not greater than necessary taking all of those
15 varying things into account.

16 And many of these things are in conflict. If you were me,
17 if you put yourself in my shoes and you heard Mr. Durkin talk
18 and then you heard Mr. Zanzi talk, you would hear two, really,
19 different views of the world, and that's because there are
20 crosscurrents in every case that -- facts that can't add up or
21 people view them in a different light, and I have to try to
22 separate those out.

23 The way I try to do that is by just looking at the case
24 from -- what are the aggravating factors, what are the things
25 about this case that really make people go, wow, it's awful, it

1 really aggravates the offense, and then what are the things
2 about the case that make people think, oh, wow, that's how she
3 was brought up or, wow, this was what her husband was doing to
4 her. These are things that might mitigate the offense. So
5 that's what I'm going to try to talk about here today.

6 Let's start with the -- you know, what are the aggravating
7 factors in this case? There's no question, and you've admitted
8 to it, you've pled guilty to it, that you were really
9 instrumental in getting your husband and his brother, your
10 brother-in-law, into Syria in a very real way.

11 It would have been very, very difficult, probably not
12 possible, for them to have done this without your help because,
13 of course, they had immigration issues and they were in this
14 country, I believe, on a green card or some kind of
15 immigration -- or student visa's that had expired, making their
16 travel overseas very difficult. And once they left the
17 country, they weren't likely to come back in. So they needed
18 somebody to assist them in this undertaking, and, of course,
19 that's what you did.

20 So the first trip you make is in February of 2015. You go
21 to Morocco via Istanbul; and according to the presentence
22 report, you meet with or speak with some people in Turkey to
23 assist you in setting up a bank account or something to that
24 effect. That's what -- in the presentence report, that's what
25 it reflects.

1 Now, the second trip that you make is on February 15 of
2 2015, and this is the trip to Hong Kong that you bring your
3 son, and it's especially aggravating. Under anybody's view of
4 the world, it's especially aggravating that you brought his
5 father to Chicago and misrepresented to him where you were
6 taking his son. I mean, you lied to him. That is a terribly
7 aggravating factor in my view of the world. This is his son
8 too.

9 So you take your son to Hong Kong, and this is just one
10 week after you had returned from your earlier trip. And you
11 are bringing cash and melted down gold, and you get a storage
12 facility and start stockpiling the things that you and Moussa
13 and his brother would need to ultimately get into Syria.

14 So then you return home, and then you make what I can only
15 describe as a jaw-dropping trip to Hong Kong. I can't even get
16 my mind around it. I mean, I can't fly to Miami without being
17 tired. I'm led to believe that you bring your son to Hong
18 Kong, and it's a day trip. You are there and back on the same
19 day, and that's just amazing to me.

20 And the reason you are doing it, of course, is to further
21 these efforts to get money out of the United States and assets
22 out of the United States into a foreign land so that,
23 ultimately, they can be transported for use to get Moussa and
24 his brother into Syria.

25 There's an effort to sell all of your personal belongings,

1 or many of them, guns and cars, other personal things, I think,
2 on eBay, if I read correctly. And you -- it appears you were
3 misrepresenting to your friends and some coworkers about the
4 purpose of your upcoming trip to hide -- you kind of lied to
5 them, frankly, about why you were making this last trip
6 overseas. You knew the real purpose you were going there, and
7 you were trying to hide it from the people who probably loved
8 you and would have been mystified to find out your real
9 purpose.

10 And then you had the opportunity, you know, to tell the
11 FBI, because you had been working with the FBI on and off over
12 many months prior to that. And according to the agents, you
13 told them that you were going to Morocco to have knee surgery
14 by your father-in-law who is an engineer, not a doctor, so it's
15 more lies that you have told.

16 And then in March, just about a week later, March 22,
17 2015, you make the final trip to Hong Kong; and while you're
18 there, there's a dispute, of course, about whether you actually
19 procured through eBay or other online sources or whether Moussa
20 was doing that, but one way or the other, I think everybody is
21 in agreement that you, at least, participated in picking up
22 this, I'll call, tactical gear that they needed for their
23 impending efforts to get into Syria. And you are -- further
24 involvement in that.

25 You finally arrive in Turkey on April 7 of 2015, and

1 shortly thereafter, you end up in Syria.

2 Now, what happened to your son in Syria is very troubling
3 to me, I got to tell you. I mean, these videos of him holding
4 some machine gun, or whatever it is, and assembling it and
5 disassembling the rifle and, sort of, being shown how to use a
6 suicide belt, I mean, these are horrifying, horrifying facts
7 that are very, very disturbing.

8 And so from my perspective, those are all of the things
9 that aggravate the offense. I think it's a fair summary of it.
10 And it can't be lost that the efforts here are -- what you're
11 attempting to do is assist two people in joining ISIS who has,
12 you know, avowed terrorist connections and intentions and no
13 question intentions and, in fact, acted on those intentions to
14 engage in violence, so it's a serious case.

15 Now, there's a lot that mitigates the case, too, on the
16 other hand. As you heard me say, this guideline enhancement --
17 I have found it applies. Everybody has agreed to it that it
18 applies. But, at best, it's a shaky application of that
19 guideline, in my opinion, and I have substantial misgivings, as
20 I have said earlier, whether it really applies or not. I found
21 that it does by virtue of the agreement.

22 But what that guideline range does is create, really, a
23 binary world. What that guideline does is it creates a world
24 in which you either are a terrorist, which is the worst you
25 could ever imagine, you know, Bin Laden, or you're like a horse

1 thief. It is either-or. And I don't think that that's the way
2 the world should operate, that there are gradations of
3 seriousness of even terrorism offenses and that people who
4 engage in serious violence and kill people and do all sorts of
5 horrible things are much worse than people who aid them or
6 finance them, I think, in any very real world view of things.

7 And so I just don't like the way this guideline creates a
8 binary choice between a substantial prison sentence or hardly
9 any prison sentence at all. I think that's unfair. I think it
10 is unwise, and I fundamentally disagree with that guideline
11 provision, which I think I'm free to do under Seventh Circuit
12 authority.

13 But what it has done here is by virtue of that guideline
14 applying, it has quadrupled, I suppose, quadrupled the
15 offense -- the suggested sentence from 33 to 41 months to 120
16 months, four times the length of sentence by virtue of this
17 application of the one guideline enhancement. I think that's
18 unwise, and I disagree with it.

19 I do think that the defendant has expressed genuine
20 remorse here, genuine remorse. Only she knows whether you
21 really are truly remorseful or you are just telling me that. I
22 can't read your mind, but from my point of view, I do sense
23 that there's genuine remorse here.

24 And I also think that there's -- mitigates the offense
25 that there's no question that the defendant was manipulated by

1 her husband. I mean, you'd have to be living in a different
2 world to not, I think, understand that or take it into account.
3 There's no conceivable way that this defendant would be sitting
4 in this courtroom but for the actions of her husband, Moussa.
5 She just wouldn't be here. She wouldn't be involved in
6 financing terrorism or anything of the sort. That would be
7 just far beyond comprehension. And I do think there is
8 evidence here that the defendant was being abused by her
9 husband.

10 It's not just relying on what she has said. I read very
11 closely what Mr. Moring said and Ms. Benke said as well as
12 Ms. Lightner and even what her former -- the father of M.S.,
13 J.S., who testified here today, that she changed really
14 dramatically once Moussa became part of her life, which I think
15 is some corroboration of abuse.

16 But all of those witnesses have corroborated what she
17 says, that he engaged in bullying and intimidation and physical
18 acts of violence and emotional violence against the defendant,
19 and so I think there is certainly some facts to support that.

20 Now, once she got into Syria and was living in Syria and
21 eventually her husband was killed in an American -- I guess in
22 a drone strike. I guess I don't know who. But he was killed
23 and she became imprisoned by ISIS, and she has recounted all of
24 the just horrible things that she had to endure during her
25 imprisonment, being burned, sleep deprivation, subject to

1 rigorous and physically demanding interrogations. She had
2 severe bleeding. She was kept in a cramped cell, severe
3 dehydration, and so in many ways her, sort of, imprisonment
4 started well before July of 2018 when she was finally brought
5 to Indiana to face these charges. And I think that's certainly
6 a mitigating factor that I should take into account.

7 I also think it's terrific that her father is here and
8 remains, sort of, a stalworth in her life. Good on him and her
9 mother to step into the void here and be raising these three
10 very young children, and you are very lucky to have somebody
11 like that to step into the breach. But I do think that that
12 portends, hopefully, hopeful things for the defendant's future,
13 that she can have a meaningful life with her family and her
14 children at some point when she gets this whole mess behind
15 her.

16 She also suffers from serious mental health issues. I
17 mean, I don't think the government disagrees with this. Maybe
18 the degree of it can be subject to debate, but it is reported
19 by Dr. Xenakis that she suffers from PTSD. Gee, that's not a
20 shock. She's been -- spent many years in a war-torn
21 environment and then subject to a prison camp and then a
22 refugee camp and separated from her children and in an abusive
23 relationship, so it's not at all surprising that she would
24 suffer from post-traumatic stress disorder and also a major
25 depressive disorder. There's nothing about that that I think

1 is even controversial or surprising. She has had a series of
2 probably charitably, I'll call, unhealthy relationships, so
3 that needs to stop.

4 But the defendant also had an excellent employment history
5 before this whole crazy episode commenced. She was always
6 working, always maintained employment, which I think portends
7 well for her future as well. She's, obviously, very smart,
8 well spoken, and a hard worker, all of which will bode well for
9 her future.

10 So those are all the things that I have looked to that I
11 think aggravate the offense and mitigate the offense, and as in
12 any case, they cut both ways. And so taking all of that into
13 consideration, I've arrived at the following sentence I intend
14 to give. I will give counsel one final chance to make any
15 final comments or make any other objections.

16 But it is the judgment of the Court pursuant to Title 18,
17 United States Code, Section 3551 and 3553 that the defendant is
18 hereby committed to the custody of the Bureau of Prisons for 78
19 months.

20 The defendant will then be placed on three years of
21 supervised release. Within 72 hours of the judgment or the
22 defendant's release from the custody of the Bureau of Prisons,
23 she shall report in person to the nearest probation office for
24 this district between the hours of 8 a.m. and 4:30 p.m. And
25 while on supervision, she'll have to comply with the following

1 conditions. There's four mandatory conditions.

2 She shall not commit another federal, state, or local
3 crime. She shall not unlawfully use, possess, or distribute a
4 controlled substance. She shall submit to one drug test within
5 15 days of release from imprisonment and at least two periodic
6 tests thereafter for use of a controlled substance, and she'll
7 have to cooperate in the collection of DNA as directed by the
8 probation office.

9 There's a number of discretionary conditions of
10 supervision, and all of these were detailed in the presentence
11 report.

12 Mr. Durkin, what my practice is is to simply incorporate
13 the language of the condition and the reasoning behind each of
14 those conditions from the presentence report into my comments
15 here today. Do you have any objection to that process?

16 **MR. DURKIN:** No.

17 **THE COURT:** Okay. So we're on page 23 of the
18 presentence report, Document Number 18.

19 I would give Discretionary Condition Number 1, Number 2,
20 Number 3, Number 4, Number 5 -- we're on page 24 now -- Number
21 6, Number 7, Number 8, Number 9, Number 10, Number 11,
22 Number 12, Number 13, Number 14, Number 15, and Number 16.

23 The reasoning behind each one of these conditions is fully
24 delineated in the presentence report, and I incorporate my
25 reasoning into my comments here today.

1 I misstated earlier. The fine range in this case was
2 actually 150,000 to 1.5 million. In all events, the fine is
3 waived in this case because the defendant has an inability to
4 pay a fine, so the fine is waived. The defendant is ordered to
5 pay a special assessment of \$100, which is due immediately.

6 The sentence that I have just given is below what the
7 sentencing guidelines suggest. I have given a sentence below
8 what the guidelines suggest for the reasons that I stated at
9 length here on the record. But to summarize, principally,
10 first, that I think the 3A1.4 guideline enhancement here works
11 a particular unfairness given what I'm calling its binary
12 nature.

13 Second, that the defendant has, in many ways, suffered a
14 substantial history of abuse, and for all of the other reasons,
15 to include her current mental health concerns that I have.

16 Counsel, do either of you know of any reasons why the
17 sentence should not be imposed as stated?

18 Mr. Durkin?

19 **MR. DURKIN:** Nothing other than what we argued in the
20 past.

21 **THE COURT:** Mr. Zanzi?

22 **MR. ZANZI:** No, Your Honor.

23 **THE COURT:** All right. Does either side need any
24 further elaboration on the sentence that I have just announced?

25 Mr. Durkin?

1 **MR. DURKIN:** (No response.)

2 **THE COURT:** Anything else you want to say?

3 **MR. DURKIN:** I could stay all day to say things, but,
4 no, I mean, we don't need anymore elaboration.

5 **THE COURT:** Mr. Zanzi?

6 **MR. ZANZI:** No, Your Honor.

7 **THE COURT:** All right. I do order the sentence
8 imposed as stated.

9 Ms. Elhassani, I have to advise you that you heard the
10 judgment of the Court imposing sentence upon you. Pursuant to
11 Rule 32(j) of the Federal Rules of Criminal Procedure, I advise
12 you that you can appeal your conviction if you think your
13 guilty plea was somehow unlawful or involuntary or if there was
14 some other defect in the proceeding not waived by your guilty
15 plea.

16 Ordinarily, you would also have a right to appeal your
17 sentence under certain circumstances if you think it was
18 contrary to law. Now, a defendant can waive their right to
19 appeal as part of a plea agreement. You entered into a plea
20 agreement where you waived your right to appeal.

21 Those waivers are generally enforceable, but if you think
22 for whatever reason the waiver in this case is not enforceable,
23 you have to present that theory to the Court of Appeals by
24 filing a notice of appeal within 14 days of the judgment being
25 entered in your case.

1 If you want to file an appeal but you are unable to pay
2 for the costs of an appeal, you may apply for leave to appeal
3 *in forma pauperis*, which means you can appeal at no cost to
4 you.

5 Counsel, I just remind you of your duties to perfect the
6 appeal should your client wish you to do so.

7 Mr. Zanzi, you'll be dismissing the other Indictment, I
8 take it; is that right?

9 **MR. ZANZI:** Yes. Do you need us to file something,
10 Your Honor?

11 **THE COURT:** Yes, please.

12 **MR. ZANZI:** We will.

13 **THE COURT:** Okay. I will take that as on oral motion
14 and grant that and sign the written version when it does come
15 in.

16 Mr. Durkin, do you want me to make any recommendations as
17 it relates to the housing of Ms. Elhassani?

18 **MR. DURKIN:** Could we tell -- call your clerk on
19 that, Judge, before you write --

20 **THE COURT:** Please do it by the end of the day
21 tomorrow.

22 **MR. DURKIN:** Yeah. Let me look at someplace near
23 Oklahoma.

24 **THE COURT:** Okay. Then I'll include that in the
25 judgment and commitment order. I think I have to technically

1 state it on the record here.

2 But, Mr. Zanzi, do you have any objection to him
3 communicating that to me sometime later and me including that?

4 **MR. ZANZI:** Of course not, Your Honor.

5 **THE COURT:** Okay. All right.

6 You know, Ms. Elhassani, it's a tough case for sure.
7 You'll get this behind you, and eventually you'll get out and
8 you're going to -- you'll be on your own, and I have a lot of
9 hopes for you. I hope you get things on track and you repair
10 your relationships, especially with your oldest son, and, you
11 know, move on in a more productive way. I wish you well. Good
12 luck to you.

13 **THE DEFENDANT:** Thank you.

14 **THE COURT:** All right. Thank you.

15 (A recess was had at 2:40 p.m.)

16 * * *

17 (End of requested transcript.)

18 CERTIFICATE

19 I, Stacy L. Drohosky, certify that the foregoing is a true
20 and correct transcript from the record of proceedings in the
21 above-entitled matter.

22 Date: January 21, 2021

23 S/Stacy L. Drohosky
24 S/STACY L. DROHOSKY
25 Court Reporter
U.S. District Court